Supreme Court, U. S.
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JOINT APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-15

CONTINENTAL T.V., INC., A & G SALES, SYLPAC, INC. and S.A.M. INDUSTRIES, INC., *Petitioners,*

VS.

GTE SYLVANIA INCORPORATED, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Certiorari Filed July 8, 1976
Certiorari Granted October 18, 1976

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DOCKET ENTRIES

Document	Entry
Complaint filed by John P. Maguire & Co., Inc. v. Continental T. V., Inc.; A & G Sales, Inc.; SYL-PAC, Inc.; JOHN DOE CO.; George N. Shahood and Margaritha H. Shahood, defendants; summons issued; writ of attachment issued	October 12, 1965
Answer filed by defendants Continental T. V., Inc., A & G Sales, Inc., Sylpac, Inc., S.A.M. Industries (sued as John Doe Co.), George N. Shahood and Margaritha H. Shahood; counterclaim and cross-claim filed by Continental T. V., Inc., A & G Sales, Sylpac, Inc. and S.A.M. Industries against John P. Maguire & Co., Inc. and Sylvania Electric Products, Inc.	November 22, 1965
Order filed that Sylvania Electric Products, Inc. be made a defendant to the cross-claim and that summons be served	December 6, 1965
Undertaking on Attachment (claim and delivery) filed in the sum of $155,-138.66; return on executed attachments (claim and delivery) filed; undertaking for release of attachment in the sum of $95,000 filed by defendants	January 11, 1966
Reply of J. P. Maguire & Co., Inc. to counter-claim filed	January 25, 1966
Stipulation and Order filed dropping parties, adding a party and allowing the filing of an amended cross-claim	March 4, 1966
Defendants and Cross-complainants' demand for jury trial filed	April 8, 1966

Document	Entry
Answer of cross-defendants, John P. Maguire & Co., Inc. and Sylvania Electric Products, Inc. to cross-claim filed	April 22, 1966
Notice of Motion and Motion by John P. Maguire & Co., Inc. and Sylvania Electric Products, Inc. for Summary Judgment (or Partial Summary Judgment) filed	April 30, 1970
Cross-claimants' Memorandum of Points and Authorities in Opposition to Cross-defendants' Motion for Summary Judgment (or Partial Summary Judgment) filed, with Exhibits attached	June 1, 1970
Conference held before Justice Tom C. Clark, Case ordered for Pre-trial July 20, 1970 and for Jury Trial September 21, 1970	June 23, 1970
Pre-Trial Order No. 2 filed (Justice Tom C. Clark)	July 15, 1970
Seconded Amended Cross-claim for restraint of trade and damage to business and property filed by cross-claimants, Continental T. V., Inc., A & G Sales, Sylpac, Inc. and S.A.M. Industries, Inc.	July 16, 1970
Pre-Trial Conference held and trial on cross-claims set for September 21, 1970 (Justice Tom C. Clark)	July 20, 1970
Order filed denying Motion for Summary Judgment (or Partial Summary Judgment) by John P. Maguire & Co., Inc. and Sylvania Electric Products, Inc.	July 29, 1970

Document	Entry
Answer filed by cross-defendants John P. Maguire & Co., Inc. and Sylvania Electric Products, Inc. to Second Amended Cross-claim	August 28, 1970
Jury Verdict Returned and filed	November 6, 1970
Cross-defendants' Notice of Motion and Motion for Judgment notwithstanding the verdict, or in the alternative for a new trial filed	November 16, 1970
Cross-claimants' Notice of Motion and Motion for Findings of Fact and Conclusions of Law respecting equitable relief claimed filed	November 24, 1970
Judgment entered, filed December 11, 1970, pursuant to Jury Verdict, that cross-claimants have and recover from cross-defendant Sylvania Electric Products, Inc., the sum of $1,774,515.00; said sum being the verdict of the Jury trebled as a matter of law, plus $18,000 costs, together with interest on said sums at 7% per annum from date of entry of judgment	December 18, 1970
Order filed denying cross-defendant's motion for judgment notwithstanding the verdict and for a new trial; Findings of Fact and Conclusions of Law filed	February 16, 1971
Notice of Appeal from designated portions of judgment filed by cross-defendant Sylvania Electric Products, Inc.	March 2, 1971
Record on Appeal transmitted to the United States Court of Appeals for the Ninth Circuit	April 9, 1971

Document	Entry
Judgment of the United States Court of Appeals for the Ninth Circuit pursuant to Rule 36 of the Federal Rules of Appellate Procedure entered affirming the judgment of the United States District Court	May 9, 1974
Opinion of the United States Court of Appeals for the Ninth Circuit filed	May 10, 1974
Corrected order of the United States Court of Appeals for the Ninth Circuit filed withdrawing the majority and dissenting opinions filed on May 9, 1974 and setting the case for rehearing en banc	December 19, 1974
Opinion of the United States Court of Appeals for the Ninth Circuit filed, after rehearing en banc, reversing the judgment of the United States District Court and remanding for a new trial	April 9, 1976
Mandate of the United States Court of Appeals for the Ninth Circuit reversing the judgment entered in the United States District Court and remanding for new trial filed	May 4, 1976
Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit filed in the Supreme Court of the United States by petitioners, Continental T. V., Inc., A & G Sales, Sylpac, Inc. and S.A.M. Industries, Inc.	July 8, 1976
Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit granted by the Supreme Court of the United States	October 18, 1976

SYLVANIA'S REQUESTED JURY INSTRUCTIONS
(Citations Are To Clerk's Transcript (CT))

[1157] Sylvania and Maguire's Requested Jury Instruction No. 29 (Revised)

If you find that any action taken by Sylvania with respect to new locations or territories was not pursuant to any contract, combination or conspiracy as I have defined those terms, but was simply the unilateral exercise by Sylvania of its own policies with respect to franchising of dealer locations, then you must find that there has been no violation of the antitrust laws and you must bring in your verdict for Sylvania and Maguire with respect to Continental's antitrust claims. If, on the other hand, you determine, in accordance with my previous instructions, that there was a contract, combination or conspiracy between Sylvania and some other party designed to achieve or enforce sales distribution restrictions on dealer locations, you should then proceed to consider whether such locations practice is lawful or unlawful under the instruction I will now give you.

If, in accordance with my previous instructions, you find that Sylvania and some other person or persons engaged in a contract, combination or conspiracy to establish or enforce sales distribution restrictions on locations of Sylvania dealers, then you must consider whether or not such restrictions constitute an unreasonable restraint of competition and trade in the Northern California or Sacramento market for television products. If they do constitute such an unreasonable restraint of competition, then the prac-

tice would be unlawful; if not, then whatever your finding on the contract, combination or conspiracy **[1158]** issue, you must find that the practices are not unlawful.

In this connection you should understand once again that the purpose of the antitrust laws is to promote competition, but not to strike down every conceivable contract or joint enterprise which might have some restraining effect on competition or trade. Every agreement concerning trade to some extent restrains. But the true test of legality is whether the restraint imposed is such as really regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question you must consider the facts peculiar to the business to which the restraint is applied, its condition before and after the restraint was imposed, the nature of the restraint and its effect, actual or probable, the history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, and the purpose or end sought to be obtained. Thus, it is that the antitrust laws prohibit only those restraints of trade which unreasonably restrict or suppress competition.

Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918) (Brandeis, J.)
Standard Oil Co. v. United States, 221 U.S. 1 59-62 (1911)

Given: .....

Refused: .....

Given as Modified: .....

.....

United States District Judge

[1159] SYLVANIA AND MAGUIRE'S REQUESTED JURY INSTRUCTION No. 30 (REVISED)

In determining the question of the reasonableness or the unreasonableness of the challenged location practice, you should understand that the antitrust laws specifically recognize the right of a manufacturer, such as Sylvania, which does not dominate a particular market, to actually agree with a particular dealer not to authorize sales of the manufacturer's products by another dealer from locations within the territory served by the first dealer. Therefore, without in any way intimating whether such an agreement exists in this case, I instruct you that if you were to find that Sylvania did agree, whether explicitly or tacitly, with a dealer, such as Handy Andy, not to franchise or permit the sale of television products by another dealer, such as Continental, in the area served by the first dealer, i.e., Sacramento, such an agreement would be a reasonable restraint of trade, and Sylvania would also be entitled to take any steps reasonably necessary to fulfill the commitment that it had made pursuant to such an agreement, if any, even if this meant keeping Continental out of the Sacramento market. Therefore, if the evidence shows nothing more than such an agreement between Sylvania and Handy Andy and steps taken by Sylvania to fulfill its commitments under that agreement, you must find that the challenged locations practice **[1160]** does not violate the antitrust laws.

Given: .....

Refused: .....

Given as Modified: .....

.....

United States District Judge

Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke and Liquors, 416 F.2d 71 (9th Cir. 1969)
Packard Motor Car Co. v. Webster Motor Car Co., 243 F.2d 418 (D.C. Cir. 1957)
U.S. v. Arnold Schwinn & Co., 388 U.S. 365 (1967)
Ace Beer Distributors, Inc. v. Kohn, Inc., 318 F.2d 283 (6th Cir. 1963)
Top-All Varieties, Inc. v. Hallmark Cards, Inc., 1969 Trade Cas. ¶72,850 (S.D. N.Y. 1969)

[1269] SYLVANIA AND MAGUIRE'S
REQUESTED JURY INSTRUCTION NO. 30C
[REPLACES 30B]

Furthermore, in evaluating the question of whether or not the challenged location practice unreasonably restrains competition, you should also understand that under the antitrust laws it is lawful for a manufacturer, in franchising a particular dealer or dealers to be retail dealers in the manufacturer's products, to designate the location or locations of the place or places of business for which said dealer or dealers are franchised. It is also lawful for the manufacturer to decline or refuse to grant a dealer's request for a franchise at a different location.

Given: .....

Refused: .....

Given as Modified: .....

.....
United States District Judge

U.S. v. Arnold, Schwinn & Co., 291 F.Supp. 564, 565-66 (N.D. Ill. 1967)

[1161] SYLVANIA AND MAGUIRE'S
REQUESTED JURY INSTRUCTION NO. 31 (REVISED)

Therefore, if you find a contract, combination or conspiracy to establish or enforce sales distribution restrictions on locations at which Continental and/or other dealers may sell products, you must further resolve the question of whether such contract, combination or conspiracy, if any, unreasonably or unduly restrained or suppressed competition or the free flow of commerce in the Northern California or Sacramento markets for television products. In resolving this question, it is proper for you to consider, to the extent justified by the evidence, various factors relating to the purpose, operation and effects of such practices. Thus, if such restrictions on locations, if any, had the effect of eliminating all competition among Sylvania dealers so that a potential Sylvania customer would have no choice of dealers from which to purchase television products, this fact would tend to show that the practice unreasonably restrained competition unless such suppression of intrabrand competition were, in your judgment, outweighed by benefits, if any, to interbrand competition. On the other hand, if the practices merely had the effect of reducing, but not eliminating, competition between Sylvania dealers without prohibiting such dealers from selling in territories more proximate to other dealers and thereby allowing customers reasonable alternatives between Sylvania dealers, this factor would tend to show that the practice did not unreasonably restrain or injure competition, particularly if such practice was adopted for the legitimate pur-

pose [1162] of increasing Sylvania's competitive strength against other manufacturers of television products.

Other factors which would tend to support a finding of an unreasonable restraint on competition would be a showing that in the general markets for television products in Northern California or Sacramento the restrictions on location of Sylvania's dealers resulted in a substantial lessening of the number of television outlets and brands available to customers in such markets, or in a materially significant lessening of competition among retail television dealers in such markets, or in a substantial foreclosure of the number of retail outlets available to other manufacturers, or in a substantial lessening of the number of television sets available to customers in such markets, or in a deterioration in quality of television products available in such markets, or in an artificially high price level for television products in such markets. Further facts might be a showing that the practice was part of an effort to drive out products of competing television manufacturers from such markets, or a showing that Sylvania's adoption of such practices was not motivated by any legitimate business purposes; or a showing that the practices were initiated, not by Sylvania, but by dealers and that dealers participated in Sylvania's decisions concerning franchising of locations of other dealers; or a showing that Sylvania was a dominant manufacturer in the sale of television products in said markets and that the purpose or effect of such practice was to increase such market domination.

On the other hand, factors which would tend to [1163] support a finding that Continental had not proved an unreasonable restraint on competition would include a showing that the practice was adopted to serve legitimate business purposes, and particularly to increase Sylvania's strength as a competitor in such markets against other manufacturers of television products; a showing that Sylvania alone adopted any such locations restrictions and at all times acted unilaterally and without dealer consultation or participation with a dealer in deciding whether to franchise additional locations; and a showing that Sylvania did not have a dominant share of any of the markets involved. Further facts might be the failure of Continental to show that such practice was adopted or resulted in the driving out of competitors or resulted in a substantial foreclosure of retail outlets for television manufacturers, or a failure to show a substantially restricted number of television brands and outlets available to customers in the market or the number of television sets availablt to such customers, or a failure to show materially reduced existing competition among retail dealers in such areas, or a failure to show a resulting deterioration in quality of television products on such market or an artificially high price in such market.

No single one of the above factors is necessarily conclusive. You may properly consider all of them, to the extent justified by the evidence, in resolving the ultimate question of, assuming joint implementation under previous instructions, whether Sylvania's

locations practice unreasonably and unduly restrained competition in the free flow of commerce in the markets involved. You should understand, **[1164]** however, that in resolving this question, it is not enough for Continental to show simply a substantial restriction, if any there be, in competition solely in the sale of Sylvania television products. Rather, since Sylvania's television products were readily interchangeable with other television products in the area, you should apply the factors I have previously mentioned to the general market for television products as a whole (that is to say, all brands) in the particular areas I have mentioned to you and you should decide whether such general competition in those markets has been unreasonably restrained as a result of the challenged practices.

Given: .....

Refused: .....

Given as Modified: .....

.....

United States District Judge

[1270] SYLVANIA AND MAGUIRE'S
REQUESTED JURY INSTRUCTION No. 31C

Therefore, if you find a contract, combination or conspiracy to establish or enforce sales distribution restrictions on locations at which Continental and/or other dealers may sell products, you must further resolve the question of whether such contract, com-

bination or conspiracy, if any, unreasonably restrained or suppressed competition or the free flow of commerce in 1964 and 1965 in the Northern California or Sacramento markets for television products. You should consider such factors as whether or not the practice eliminated or unreasonably impaired competition among Sylvania dealers, whether or not any limitation on competition among Sylvania dealers, had a substantial adverse effect on competition among retail television dealers in general or among manufacturers of television products, whether or not the practice significantly impaired or restricted the amount, variety or quality of television outlets or television products available to consumers in these markets. You should also consider any benefits to competition which may result from the challenged practice, and also whether or not the practice was adopted as a reasonable means of achieving any legitimate business purposes. In this connection you should understand that if, in view of all the circumstances, it is found that a practice unreasonably restrains competition in the market place, such a practice would be unlawful even if there were good business reasons to adopt it. However, the presence or absence of legitimate business purposes is one of the factors you should consider, along with all other relevant factors, in determining whether the practice does constitute an **[1271]** unreasonable restraint on competition.

No single one of the above factors is necessarily conclusive. You may properly consider all of them, to the extent justified by the evidence, in resolving the

ultimate question of, assuming joint implementation under previous instructions, whether Sylvania's locations practice unreasonably and unduly restrained competition in the free flow of commerce in the markets involved.

Given: .....

Refused: .....

Given as Modified: .....

.....

United States District Judge

See *Boro Hall Corp. v. General Motors Corp.*, 124 F.2d 822 (2nd Cir. 1942); *Packard Motor Car Co. v. Webster Motor Car Co.*, 243 F.2d 418 (D.C. Cir. 1957); *Schwing Motor Co. v. Hudson Sales Corp.*, 138 F.Supp. 899 (D. Maryland), *aff'd. per curiam*, 239 F.2d 176 (4th Cir. 1956); *Top-All Varieties, Inc. v. Hallmark Cards, Inc.*, 5 CCH 1969 Trade Cases ¶72,850 (S.D.N.Y. 1969); *Potter's Photographic Applications Co., Inc. v. Ealing Corp.*, 292 F.Supp. 92, 103-05 (E.D.N.Y. 1968); *L.S. Good & Co. v. H. Daroff & Sons, Inc.*, 279 F.Supp. 925 (D.W.Va. 1968); *Peerless Dental Supply Co. Inc. v. Weber Dental Manufacturing Co.*, 283 F.Supp. 288 (E.D.Pa. 1968).

[1272] SYLVANIA AND MAGUIRE'S
REQUESTED JURY INSTRUCTION No. 31D

You should understand that in resolving the question of whether (assuming there is a contract, combination or conspiracy) Sylvania's locations practice unreasonably restrained competition, it is not enough

for Continental to show simply a substantial restriction, if any there be, on competition solely in the sale of Sylvania television products. Rather, since Sylvania's television products were readily interchangeable with other television products in the area, you should apply the factors I have previously mentioned to the general market for television products as a whole (that is to say, all brands) in the particular areas I have mentioned to you, and you should decide whether in 1964 and 1965 such general competition in those markets was unreasonably restrained as a result of the challenged practices.

Given: .....

Refused: .....

Given as Modified: .....

.....

United States District Judge

Packard Motor Car Co. v. Webster Motor Car Co., 243 F.2d 418 (D.C. Cir. 1957); *Top-All Varieties, Inc. v. Hallmark Cards, Inc.*, 5 CCH 1969 Trade Cases ¶72,850 (S.D.N.Y. 1969); *Beckman v. Walter Kidde & Co., Inc.*, 1970 CCH Trade Cases ¶73,347 (E.D.N.Y. September 22, 1970)

[1299] SYLVANIA AND MAGUIRE'S
REQUESTED JURY INSTRUCTION No. 61

Note. This instruction is tendered for use only if the Court decides to instruct the jury on the theory that a restriction on the locations at which merchandise may be sold falls within the rule

of *per se* illegality enunciated in *U.S. v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967) and is not governed by the "rule of reason."

If you find by a preponderance of the evidence that Sylvania entered into a contract, combination or conspiracy to establish or enforce sales distribution restrictions which prevented dealers from selling merchandise, owned by them, at any store or location in which they chose to sell it, unless you find that such practice was justified under the instructions I am about to give you, you must find that Sylvania violated §1 of the Sherman Act.

However, you should understand that under the antitrust laws it is lawful for a manufacturer, in franchising a particular dealer or dealers to be retail dealers in the manufacturer's products, to designate the location or locations of the place or places of business for which said dealer or dealers are franchised. It is also lawful for the manufacturer to decline or refuse to grant a dealer's request for a franchise at different or additional locations. Therefore, in order to find that Sylvania has violated the antitrust laws it is not enough to find a contract, combination or conspiracy under which Sylvania restricted the locations at which dealers were franchised to act and hold themselves out as authorized dealers in Sylvania products. In order to find for Continental, you must find that Sylvania engaged in a contract, combination or conspiracy to establish or enforce sales distribution restrictions which **[1300]** prevented dealers from moving merchandise, owned by them, to

non-franchised locations, or from selling such merchandise at non-franchised locations.

If you find such a contract, combination or conspiracy to restrain movement or sale of merchandise, such a practice would be presumptively unlawful. However, before you can find it to be a violation of the antitrust laws, you must consider whether it was justified. In this case, such a restriction would be justified if Sylvania has proved by a preponderance of the evidence that the adoption of such a restriction was reasonably necessary to enable Sylvania to remain in the television business or to enable it to increase the strength and effectiveness of its competitive efforts in the television industry. If you find that such justification has been shown, you should find that Sylvania and Maguire have not violated the antitrust laws. If you find that Sylvania has not proved such a justification by a preponderance of the evidence, and if you find the existence of a contract, combination or conspiracy to restrict movement or sale of merchandise, as I have defined it above, then you should find that Sylvania has violated the antitrust laws.

Given: .....

Refused: .....

Given as Modified: .....

.....

United States District Judge

U.S. v. Arnold, Schwinn & Co., 388 U.S. 365 .....(1967)

[1301] Federal Trade Commission Staff Report on Franchising, at 30 (December, 1969) (See discussion in Sylvania and Maguire's Memorandum at pages 16-17);

U.S. v. Arnold Schwinn & Co., 291 F.Supp. 564, 565-66 (N.D. Ill. 1967)

DOCUMENTARY EVIDENCE

Pltfs. Ex. 3

SYLVANIA ELECTRIC PRODUCTS INC.
HOME & COMMERCIAL ELECTRONICS DIVISION

This Agreement made the 19 day of March, 1964 between Sylvania Electric Products Inc., Home & Commercial Electronics Division, 700 Ellicott Street, Batavia, New York, a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Sylvania"), and Continental TV, Inc. (Hereinafter referred to as "Dealer"),

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Sylvania is pleased to appoint Dealer as an authorized Sylvania dealer of television receivers, stereo high fidelity reproducers and radios bearing the trademark "Sylvania" offered for sale by Sylvania from time to time during the term hereof and intended for home entertainment uses (hereinafter "merchandise").

2. Sylvania will endeavor at all times to:

(a) provide the finest merchandise which will offer dealer a fair profit opportunity;

(b) present strong and energetic merchandising programs;

(c) provide franchised Dealers maximum sales potential.

3. Dealer agrees to maintain an adequate stock and representative display of merchandise. Dealer further agrees to maintain an adequate inventory of merchandise and to promote vigorously and effectively the sale of merchandise.

4. Dealer agrees to maintain and render at Dealer's expense proper installation and service on merchandise in accordance with the installation standards and service policies established by Sylvania from time to time.

5. Dealer agrees to abide by advertising and promotional policies as from time to time established by Sylvania.

6. Sylvania shall not be liable for failure to ship any merchandise in any accepted order becaus of reasons beyond its control including but not limited to strikes, differences with workmen, accidents, fires, shutdown of its manufacturing plants or plants supplying it, governmental orders, riots, floods, acts of God, embargoes, inability to secure transportation facilities or contingencies arising out of or due to national defense activities, war or emergency conditions.

Delivery of part of an order does not obligate Sylvania to make further deliveries, and Sylvania

reserves the right to reject any order in whole or in part. Sylvania also reserves the right to allocate its inventories and current production in any way deemed by it to be desirable.

7. Dealer agrees to mail and render to Sylvania on and in accord with forms and instructions provided by Sylvania, all such reports, periodical or otherwise, of stocks, sales, and such other pertinent information relative to Dealer's inventory of merchandise purchased from Sylvania as Sylvania may from time to time request.

8. Dealer agrees to use trademarks or trade names of Sylvania in advertisements, letterheads, or otherwise only as may be approved by Sylvania from time to time in writing, but Dealer shall acquire no rights under this agreement in any such trademarks or trade names, and Dealer, upon termination of this agreement further agrees simultaneously therewith to discontinue all uses of such trademarks and trade names.

Dealer, for the duration of this agreement and thereafter will do nothing that will in any way infringe, impeach or lessen the value of the patents, trademarks or trade names under which any of such merchandise is sold, or do anything that will tend to prejudice the reputation or sale of any such merchandise.

9. During the term hereof the relationship between Sylvania and Dealer is solely that of vendor and vendee; the Dealer, its agents and employees shall, under no circumstances be deemed agents or representatives of Sylvania for any purpose whatsoever and Dealer shall have no right to enter into any contracts or commitments in the name of, or on behalf of, Sylvania, or bind Sylvania in any respect whatsoever.

10. This agreement is executed in and shall be interpreted according to the laws of the State of New York.

11. This agreement contains the full agreement between the parties, and Dealer and Sylvania declare and agree that there are no other terms or conditions, representations or understandings except those set forth in this agreement.

12. Terms of sale are net thirty (30) days.

The Dealer agrees to mail to Sylvania's Credit Department, financial statements and information from time to time as required by the latter. Sylvania reserves the right at all times, either generally or with respect to any specific order by the Dealer, to vary, change or limit the amount or duration of credit to be allowed the Dealer.

13. This agreement shall continue in force from the date hereof until terminated for any reason whatsoever by either party hereto upon ten (10) days written notice to the other. In the event of cancellation of this agreement, Sylvania is hereby granted the option to repurchase any unsold merchandise in Dealer's inventory at Dealer's invoice price.

14. With respect to all merchandise purchased by the Dealer from Sylvania hereunder, the Dealer agrees that, upon the release thereof, it will deliver

therewith such printed warranties or guarantees with respect to such merchandise as shall be furnished by Sylvania to the Dealer for that purpose. The Dealer further agrees that Sylvania's obligations to the Dealer with respect to all merchandise purchased by the Dealer from Sylvania hereunder shall be as set forth in the aforesaid printed warranties or guarantees furnished by Sylvania and that the Dealer will not purport to obligate Sylvania by issuing any other warranties or guarantees with respect to such merchandise.

In Witness Whereof these presents have been executed as of the day and year first above written.

SYLVANIA ELECTRIC PRODUCTS INC.
HOME & COMMERCIAL ELECTRONICS DIVISION
By: R. J. Theis
CONTINENTAL TV, INC.
By: Geo. N. Shahood

Deft. Exhibit C

DISTRICT SECTION I

TIPS ON SEEKING NEW ACCOUNTS IN S.L.D. MARKETS

1. . . . . Determine the size of each prospective account in the market.

2. . . . . Rate each Dealer on the basis listed below.

Basis: TV Units—Annual Total Store Sales:

Classification	TV Units Annual Rate	TV Units Weekly Rate	Annual TV $ ($133 Avg.)	Avg. Units Per Class
C	0- 25	(0)-1*EOW	$ 0/$ 3,325	15
B	26-129	(1) EOW-2.4 wk	$ 3,458/$17,157	65
A	130-389	2.5 wk-7.4 wk	$17,290/$51,737	195
AA	390 & Over	7.5 wk-	$51,870/	650

*EOW—(Every Other Week)

The types of accounts we want for our District Program are: Types "AA" and "A".

To determine the potential of the account, ask these two questions:

1. . . . . How many TV do you sell a year?

or

2. . . . . How many TV do you average per week?

From either of the two answers, arrive at your classification (per above).

Note: In some cases, Type "B" accounts may be added to our SLD Program—but, primary emphasis should be directed to "AA" and "A".

We Must Get a Minimum of Three (3) Sets per Week From Each Account!

What happens to the total territory, based on this minimum of three (3) TV units per week per account?

1 . . . . . Establish a base of 30 dealers—"AA" and "A" types, as quickly as possible.

2 . . . . . Three (3) units per week of 150 units per year—gives you a TV volume in your territory of:
$133 (Avg. Dealer Cost) × 150 units = $20,000 a yr. × 30 dealers = $600,000.

3 . . . . . Obviously, Stereo/Radio business is in addition to this or—if necessary—it will make up some part of the $20,000 per account minimum goal.

To reduce the total job per dealer into a plan of action—the target should be as follows: (Approximate numbers used).

1 . . . . . January Display Program: 30 units
(This leaves two 14-set orders prior to June) = 58

2 . . . . . June Display Program: 45 units.
(This leaves three 14-set orders prior to January) = 87
Total TV Units Per Year: = 145

Note: Keep in mind—It is important to groove the account into buying 14-units at a time. You should call on the Sylvania dealer no less than every 4/5 weeks. He MUST be encouraged to maintain his minimum selling rate of 3-units per week. IF he is a "believer"—a 14-set order

will be ready no later than every 5-weeks. IF NOT—determine the problem and take correction action!

How Much "Elbow Room" Is There, Really, In Our Program . . . . ?

Use the following industry statistics as evidence of our limited number of dealer-approach. NOTE: We give SUPER "elbow room"—while "elbow room" is adequate to make the program a success.

Deft. Exhibit F

SALES SECTION II

SLD PROGRAM

1A—The Franchise—Sylvania Home Entertainment Products are only sold through franchised dealers, properly trained and well equipped to sell the merchandise.

The franchise is not a meaningless paper that puts the dealer in a profit squeeze with weak competitors. The franchise is based on stability of direct factory relationship, with a strong straight forward program of policy and understanding. The franchise contains a good profitable selling climate by creating "elbow room" in a sensible territory based on market and dealer potential. "Same brand" competition is eliminated.

2A—The Pricing—The Sylvania Home Entertainment Product is realistically priced to the franchised dealer and, consequently, can be sold competitively and profitably in the market place.

The Product is priced to include freight and the quantity prices are available to all franchised dealers, regardless of size or market geography. The savings and efficiency, made possible by the SLD Program, are evidenced by any price comparison with any other Product of comparable quality.

3A—Financing—Sylvania offers the dealer the finest method of financing in this industry . . . . . The J. P. Maguire Plan (See Management Section—Check List Number 19). This plan offers the easiest financial method of maintaining a representative display of the Sylvania Product—A tremendous plus factor in our program.

B. *Straight Line Distribution (S.L.D.)*

Straight Line Distribution is Sylvania's concept of the proper way to distribute and market products in the metropolitan markets. It incorporates the best thinking . . . most up-to-date ideas . . . finest communications—between factory and dealer yet devised. *It Is The Industries Finest Factory Direct Program.*

S.L.D. is designed for the present and for the future. It gives Sylvania better control of its distribution, reduces distribution costs and gets the Sylvania merchandise to the dealer and the ultimate consumer—at the most competitive prices.

Profit opportunity is a *Prime* factor in the mind of the dealer today. S.L.D. guarantees the dealer that he always buys right from Sylvania—because the price is the same *Everywhere in America.* Our price sheets

are printed at our headquarters in Batavia. Dealers can be sure that they are buying "right" from Sylvania—365-days a year.

S.L.D. also eliminates "same brand competition". Sylvania wants fewer dealers and—quality rather than quantity. By not over-franchising, Straight Line Distribution eliminates vicious price cutting and establishes suggested "go" prices that enables each dealer to make a fair profit and each consumer to receive an outstanding value.

"Elbow room" gives every Sylvania dealer a geographic area in which to sell our Sylvania products. S.L.D. does not promiscuously franchise dealers without first studying their size, location and effect on the market (as well as other Sylvania dealers in the area). By franchising dealers by territory—Sylvania becomes an important profit factor to its dealers. This creates good relationship and proper respect—between factory and dealer.

Six modern, major product distribution centers serve the needs of our customers. These centers contain a complete mix of strategically located inventories of all Sylvania Home Electronics products. All Television and Hi-Fi sets are shipped to the dealer—freight prepaid.

Proper communication is a vital part of our S.L.D. Program. Each of our six modern distribution centers is connected by a direct line with our factory in Batavia and the central billing system in Camillus, New York.

There is a credit manager and an order/billing manager at each of these distribution centers to handle the needs of our Sylvania customers. In addition, each District Sales Manager lives in the heart of the territory he covers and can easily be reached by all Sylvania S.L.D. dealers.

Deft. Exhibit BV

YLA045- CTV CLA 9/8/65

T RIVERS

PLS ADV CURRENT SITUATION REGARDING CONTINENTAL TV AND REQUEST FOR FRANCHISE (SACRAMENTO) I HAVE HELD LAST ORDER PENDING HEARING FROM YOU

K LOPOLITO LOSA

TESTIMONY OF THE WITNESSES
(Citations Are To Reporter's Transcript (RT))

Testimony of Lee French

[15] * * * Mr. Miller: Q. Okay, now, Mr. French, as you have indicated, the S.L.D. program is indeed set forth in the manual. It is marked in Exhibit F, Your Honor. Let me show you that, Mr. French.

Now excerpt of it is entitled "S.L.D. program," and it says in substance this:

"The franchise—Sylvania Home Entertainment Products are only sold through franchised dealers."

"The franchise is not a meaningless paper that puts the dealer in a profit squeeze with weak competitors."

It goes on to say: "The franchise contains a good profitable selling climate by creating 'Elbow room' in a sensible territory based on market and dealer potential. 'Same brand' competition is eliminated."

It goes on to say in the fourth paragraph: "The savings and efficiency, made possible by the S.L.D. program, **[16]** are evidenced by any price comparison with any other product of comparable quality."

It goes on to say in the fifth paragraph: "Financing —Sylvania offers the dealer the finest method of financing in this industry. . . . The J. P. Maguire plan (see management section—check list number 19). This plan offers the easiest financial method of maintaining a representative display of the Sylvania product—a tremendous plus factor in our program."

Now, continuing, Mr. French, on the next page, this policy statement says:

"Straight line distribution (S.L.D.)

"Straight line distribution is Sylvania's concept of the proper way to distribute and market products in the metropolitan markets."

It goes on to say in Paragraph 2, sir: "It gives Sylvania better control of its distribution."

And it goes on in Paragraph 4: "S.L.D. also eliminates 'same brand competition.' Sylvania wants fewer dealers and—quality rather than quantity. By not over-franchising, Straight Line Distribution eliminates vicious price cutting and establishes suggested 'go' prices that enables each dealer to make a fair profit and each consumer to receive an outstanding value."

And Paragraph 5 says, "Elbow room" gives every **[17]** Sylvania dealer a geographic area in which to sell our Sylvania products. S.L.D. does not promis-

cuously franchise dealers without first studying their size, location and effect on the market (as well as other Sylvania dealers in the area).

"By franchising dealers by territory—Sylvania becomes an important profit factor to its dealers."

Mr. French, then we go down to Paragraph 7——

Mr. Popofsky: Maybe you would read the last sentence.

Mr. Miller: "This creates good relationship and proper respect—between factory and dealer."

Now, Mr. French, this statement of policy was contained in the manual of 1963, was it not?

A. I believe it was, yes.

[Continued on next page; nothing omitted.]

[18] Mr. Miller: I offer this as our next exhibit in order, Your Honor.

* * *

[19] * * * The Clerk: This is marked Defendant's F. Would you like this to be introduced as Defendant's F?

Mr. Miller: Just F. It will be Continental's F.

Mr. Popofsky: We have a problem with plaintiff, defendants, cross-claimants and cross-defendants and all that.

The Court: I understood we were going to designate you as claimants.

(Claimant's Exhibit F marked and received into evidence.)

Mr. Miller: Q. I have handed you a document which has been premarked as Exhibit C, and turning to the second page, at the bottom, the policy statement says: "How much elbow room is there really in our program? Using the following industry statistics, evidence of our limited dealer approach, note, we give super elbow room while elbow room is adequate to make success."

Was that policy statement contained in the manual in 1963, sir?

A. I don't remember it exactly. I would assume that it is if the page is from the manual.

Q. Thank you, sir. And the manual is in loose-leaf form or was, was it not?

[20] A. I believe it was.

Q. And it was supplemented from time to time with further policy statements and procedures—check list and so on, was it not? A. Yes.

Mr. Miller: We would offer claimant's C next in order, Your Honor.

Mr. Popofsky: No objection subject to the cleaning up process.

The Court: It's understood it will be cleaned up.

(Claimant's Exhibit C marked and received in evidence.)

Mr. Miller: Q. Now, Mr. French, when you got to the West Coast and became the District Sales Manager for this area, you went about franchising dealers under the SLD program, did you not, sir? A. Yes, sir.

Q. And basically, you followed the instructions in the manual? That is to say, you contacted a proposed franchisee, you told him about the SLD program, is that correct? A. Yes, in my own words.

Q. Yes. And you pretty much followed the substance of what the manual contained regarding the SLD program, isn't that right?

[21] A. In essence—I believe you could say that.

Q. Okay. Now, this elbow room policy was not part of the old distribution plan, was it, sir? A. What old distribution plan?

Q. The old distributorship—factory and the independent distributors? A. In what way—oh, there's a lot of different things. There's a lot of differences in this type of distribution than there is in the factory—factory branch distribution. Yes, there's a lot of differences.

Q. Let me put it this way. Do you have any personal knowledge as to the manner in which the territories to which you were assigned were created by the national sales department? A. I was not present when they were drawn up. I don't know exactly how they were designated or in what manner each territory was drawn up on.

Q. Well, what I'm getting at, Mr. French, is it not a fact, sir, the elbow room policy came into existing and was introduced as part of the new SLD approach that Mr. Theis and Mr. Morgan installed in 1962? A. Yes.

Q. Now, under this SLD elbow policy, each district sales manager, such as yourself, had pretty much complete discretion and control, sir, as to whom you would franchise [22] as a Sylvania dealer, isn't that so? A. Yes.

Q. Now, in other words, you also had this kind of complete control over the location, the dealer location, isn't that right, that you wished to have? A. Yes.

* * *

[23] * * * Q. Mr. French, I believe you mentioned when you got to the West Coast here in 1963 that you set about to franchise dealers, is that correct? A. That's true.

Q. And for the first time, at least in your memory, you used a written franchise agreement, correct, sir? A. Yes, sir.

Q. Now, it is a fact, is it not, that a franchise agreement did not contain a location clause? A. It did not contain a location clause.

Q. But you did verbally speak to each dealer you franchised about location, did you not? A. Yes, sir.

Q. And as a matter of fact, each dealer was verbally notified at the time he was franchised as to exactly and precisely which location was being franchised, isn't that right? A. Yes, sir.

* * *

[24] * * * Q. Let me restate the question for you, Mr. French. A. All right.

Q. As you franchised these dealers in 1963, sir, you verbally notified them precisely which of their locations was being franchised by Sylvania, is that right? A. By me?

Q. By you. A. Yes.

I am franchising them, and I am the one who had control of my territory subject to the approval of my

peers. Yes, I am the one who was saying, "Well, this is the location that I am franchising."

Q. And you didn't put that in writing? A. No.

Q. You didn't do that did you? A. No, it's a verbal agreement.

Q. Verbal agreement with each particular dealer at [25] the time you franchised them, correct? A. This is true.

Q. And that practice continued from 1963 on through at least 1965, didn't it? A. Yes.

Q. Now, any given dealer that you franchised in 1963, you verbally told him, "Mr. X, I'm franchising this location, and this location only."

If that dealer subsequently, Mr. French, in 1964 opened another store, branch store, what was your practice? A. I asked him to let me know where it was, and possibly we could negotiate a franchise for it, or that I would be willing to talk to him about it. I believe this is the answer you want.

* * *

[26] Q. Let me put it this way, Mr. French. Under the example I have just given you where the dealer who you verbally franchised first—he has a main store—has a branch store subsequently—— A. Right.

Q. ——it is necessary for him to seek approval from you before he can be considered a franchised Sylvania dealer at his branch store, isn't that right? A. Right.

Q. And it is against Sylvania policy for that dealer to move merchandise into that branch store and sell it

before he gets approval for a franchise from you, isn't that right? A. Against Sylvania's policy?

Q. Yes, sir. A. I can't say definitely that it is against Sylvania's policy. It's against my policy.

I wouldn't want it to maintain a decent relationship with the dealer.

Q. You wouldn't do it any other way? A. Right.

Q. As a matter of fact, that was your policy in 1963, was it not? A. Right.

Q. Okay. And that continued to be your policy in [27] 1964 and and 1965—— A. Right.

Q. ——in your territory? A. Right.

Q. Is that right? A. Right.

Q. And when you would franchise the branch store, you would do so verbally, would you not? A. That is right.

Q. And—— A. To the dealer.

Q. Excuse me? A. To the dealer.

Q. To the dealer owning the store? A. Yes.

* * *

[30] * * * Q. Is it a fair statement to say if you told us under oath in your deposition that you had five or less dealers in Santa Clara County in 1963 that that would be a better recollection than you would have presently? A. Absolutely.

Q. Thank you.

How about Alameda County?

Can you estimate for us how many dealers you had there in 1963? A. There were five there approximately.

Q. How about Contra Costa County? That was your territory? A. Yes.

Q. How many dealers there in 1963? A. Maybe four.

[31] Q. And how about San Mateo?

How about San Mateo County? A. Five possibly —maybe six.

Q. All right. You said in 1966 under oath in your deposition you had two dealers in San Mateo County. Does that refresh your recollection? A. If that is—okay.

Q. How would you describe Sylvania's market share in your territory in 1963? A. Somewhere around five percent—maybe less.

Q. Overall? A. One percent possibly.

Q. Now, in your deposition in 1966, under oath you testified that Santa Clara market penetration was about three to five percent; San Mateo and Alameda being about half that. Would that refresh you at the present time? A. Yes.

Q. Does that seem accurate to you? A. I have an idea in my memory it was a little better than it is now.

Q. You didn't have a dealer in Salinas in 1963, did you? A. No.

* * *

[36] Q. All right, when was it that you would say there was substantial increase in the color demand in the territory? A. Probably in the fall of '64, probably.

Q. During 1964 at some point? A. I believe so.

Q. And that continued to 1965, did not it? A. Yes.

Q. And that demand increased in 1965, did it not, sir? A. Yes.

Q. And increased steadily from January 1965 through September 1965, is that correct? A. Yes.

Q. And until about September or October of 1965, there was a tremendous, unprecedented demand for color merchandise on behalf of dealers, isn't that a fair statement? A. The matter of supply and demand was a real factor, yes. There was more of a demand than the manufacturers were able to supply at that time.

Q. When did Sylvania first have a full line, all flavors and models of color television merchandise? A. That is a pretty broad statement, really. There are some flavors they still don't make.

[37] Q. All right, let's take it by year. In 1963 you testified Sylvania did not have a very complete color line, is that fair? A. That is right.

Q. In 1964, what was the situation? A. In '64, I believe it was in June of '64 that we introduced a more complete color line.

Q. All right, sir, now you mentioned June of '64; is it not a fact that June of each year is the introduction date for the next following year's models? A. I believe so, yes.

Q. And to your knowledge that is an industry practice, is it not? A. Right.

Q. Just like car models? A. This is true.

Q. So in June of 1964, the 1965 line of television models would be introduced? A. Yes.

Q. And in June of 1965 the 1966 line of television models would be introduced? A. That is right.

Q. All right, now, you mentioned this unprecedented market that commenced in September and October of 1965. Was Sylvania caught in the manufacturing bind also? [38] A. In 1965?

Q. Yes, sir. A. Yes.

Q. Would you describe for us generally the situation that existed for Sylvania as of October 1965? A. Yes. I believe we went on dealer allocation, as far as color sets.

Q. Do you have any knowledge as to whether or not any other manufacturer went on allocation also? A. I think almost all of the manufacturers. I can't say for sure but I believe they were.

Q. And what do you mean by allocation? A. I mean that the factory was only able to produce a given number of color television sets to supply their existing franchise dealers.

Q. So that they rationed them? A. An equitable share to each dealer had to be on an allocated basis.

Q. How long did that shortage basis last, Mr. French? A. Probably a year. I don't believe it was much longer than that.

Q. About a year? A. I believe it was.

Q. And what month in 1966 would you say it was over? A. Probably during the summer.

* * *

[43] * * * Q. Okay, did you explain the Elbow Room policy to Mr. Shahood on that occasion? A. I believe that I went into the Elbow Room Policy, yes.

Q. You told him in essence you were not going to establish a dealer close to him in that market area?

A. I did not exactly say that I was not going to put a dealer in his area. I said that I was looking for a given amount of penetration in each market area. That if I was getting that, I certainly was not soliciting dealers from that given area.

Q. I would like to refer, if it please the Court and counsel, to Page 112 of Mr. French's deposition, taken on May 23, 1966, commencing Line 21.

"Mr. Miller: Q. Thereafter, did you meet him at his store or his proposed store location?

"A. Yes, I went in to San Leandro.

"Q. San Leandro is part of your territory, right?

[44] "A. Right.

"Q. And what was the substance of your discussion—" Continuing on Page 113—"at that location?"

"A. The general substance of the discussion with any dealer that I go into franchise is explain our policy and programs of merchandising. That we are a factory direct organization. That I had a large territory to cover. That I was not able to put dealers right next door to each other and I had to establish dealers in certain areas that were going to get me the volume and a good merchandise turnover and display for that particular area. That it was necessary to put in a full line display of the merchandise.

"That we feel that a dealer is entitled to a fair profit margin in merchandising Sylvania, and we liked to do business with that type of dealer."

Mr. French, does that impress you——

* * *

[46] * * * Mr. Miller: Q. Mr. French, isn't it a fact after all this harangue of counsel that you did indeed tell Mr. Shahood on that occasion that you were not about to establish a dealer right next door to him, if you franchised his store? A. That is right, and I don't believe that I denied that in my first statement.

Q. That is in keeping with the Elbow Room Policy as expressed in the Sylvania Sales Manual, is it not? A. Yes.

Q. And that is what you were told the policy of the company was, correct, sir? A. I don't follow that question, maybe I——

Q. All right, I am simply saying that what you told Mr. Shahood in San Leandro at your first meeting with him about that subject was in keeping with your understanding of the S.L.D. program, and specifically the Elbow Room Policy thereunder? A. It is my interpretation the way that I can run my business under the existing program, yes.

Q. And it was in keeping, as far as you knew, with that policy? A. I don't think it was anything contrary to the [47] program.

Q. Right, as far as you knew at that time you were operating under your company policy, were you not? A. I believe that I was.

Q. And I feel certain you continued to operate under that policy throughout 1964 and 1965? A. I hope that I was.

* * *

[56] * * * Q. Now, did you sign Continental TV up to the new written franchise like Exhibit 3 at the

time you franchised the Stevens Creek store? A. No.

Q. It was not the policy of your company to do so, was it? A. No.

Q. In other words, after the original written franchise bore a given location, each additional franchise was granted verbally, isn't that correct? A. Verbally I notified them as far as the credit department was concerned and as far as our sales office is concerned.

Q. And did that by memorandum? A. On an order. On an order. On placing an order, which was at the Stevens Creek Store. The order was placed directly to be delivered to this address.

Q. Let's suppose you have decided to franchise a given dealer. Who in the sales department must approve your decision? A. It would be my immediate supervisor.

[57] Q. In 1964-1965, Mr. Don Carroll, regional sales manager, correct? A. That's correct.

Q. And how was your request for approval communicated to Mr. Carroll in 1964—you know, in general? A. On the telephone, I believe.

Q. Verbally? A. Through telephone conversations.

Q. Generally it was not in writing, was it? A. No.

Q. What other approvals in the sales department were necessary when you decided to approve a dealer in your own territory? A. It depends on circumstances, I believe, but on this particular incident, I

just notified Don Carroll of the store and the location. Naturally it was one of the finest looking stores. I was proud to be able to have it as a franchise location. I made quite a point of it.

Q. Did Mr. Carroll have any objection to this store? A. If he did, he never mentioned any.

Q. Well, did he not say in essence, it's fine with me. We need help here? A. Well, in essence, yes. He never had any objections.

* * *

[58] * * * Mr. Miller: Q. In general, would there need to be any approval above Mr. Steiner in the sales department for—— A. No.

Q. Just a moment. A. Not to my knowledge.

[59] Q. Okay. ——for the approval of a franchise dealer within your territory?

You wouldn't have to go above Mr. Steiner, for instance? A. I wouldn't think so.

Q. As a matter of fact, you wouldn't even have to go to Mr. Steiner. Going to Mr. Carroll was generally sufficient within your own territory? A. As far as I know. I don't know that it goes any further than that.

Q. And that was true in 1964 and also in 1965, wasn't it? A. I believe so.

Q. Now, who in the credit department did you have to go to, Mr. French, where the dealer was in your territory? A. I would notify Mrs. Barnes.

Q. Mrs. Barnes down here, area credit supervisor? A. This is right.

Q. And then after she left, Mr. Lopolito—— A. Right.

Q. ——took her place? A. Yes.

Q. Would you have to go any further as far as you knew up to national credit level? A. I never went any further.

[60] Q. Did anybody in the credit department have any objection as far as you knew to the Stevens Creek franchise? A. Not to my knowledge.

Q. Doesn't Sylvania really leave the decision as to franchising a dealer in your territory entirely up to you as that territory's manager? A. Pretty much, yes.

Q. In other words, if you say, "I don't want this particular dealer to be franchised," generally Mr. Carroll, Mr. Steiner and Mr. Morgan would not overrule you, would they? A. I never tried it really.

Q. Let me rephrase it.

You have never experienced a situation where you did not want to franchise a dealer inside your territory but had Mr. Carroll and Mr. Steiner or Mr. Morgan, one of those men, reversed that decision on you—that never happened, right? A. Not to me.

Q. Never happened in all of the time you have been in your territory, has it? A. No.

Q. As a matter of fact, after you make a franchise decision, you don't hear anything from a national department—you assume there is no objection, don't you? A. Yes, sir.

[61] Q. Now, excluding Continental's case, have you ever had an objection from a national sales de-

partment where you have franchised a dealer in your territory—an objection about your decision to franchise that dealer? A. I don't remember any.

Q. Right. As a matter of fact, you haven't had any since 1963, have you, to the present time? A. I don't believe so.

* * *

[68] * * * Q. Okay. Now, after the Stevens Creek Store was franchised in Oakland, Mr. Shahood on behalf of Continental TV indicated to you that he was interested in the San Francisco market, did he not? A. I don't remember exactly the time it was mentioned. He mentioned several. I'm not sure the period this happened, San Mateo, Oakland, San Francisco—I believe somewhere along the line he was planning 10 or 12 stores, but I can't be sure of the time. If this is the time period, then I concur with it.

Q. All right. Mr. French, I'm leading up to the period of June, 1964, the Berkeley dealer show, and I would like to ask you, prior to that dealer show, had you ever been informed by anybody from Continental TV that they were interested in the San Francisco market? A. I believe this was brought up at that time, [69] yes.

Q. As a matter of fact, didn't you relay this information immediately to Mr. Carroll here? A. Yes.

Q. Right. And this was the first occasion, was it not, where Continental TV had talked about going into someone else's territory? A. Yes.

Q. And this was Mr. Carroll's territory at this time, correct? A. Yes.

Q. Because Mr. Carroll was handling the San Francisco area later covered by Mr. Hallday? A. Right.

Q. So you immediately notified Mr. Carroll of this concept or idea that Continental was talking about? A. Right.

Q. And as a matter of fact, when you did that, Mr. Carroll didn't question anything else except the location, a proposed location? He wanted to know that, didn't he? A. Well, where and when, yes.

Q. Where and when. A. Yes.

Q. Correct? A. (No response.)

[70] Q. And as a matter of fact, he told you in substance that when Continental did find a specific location for you to notify him? A. Right.

Q. Now, that's pretty normal in any case, is it not? A. Yes, sir.

Q. That is, where a dealer who is a franchise dealer for the first time requested franchise outside your territory, you have got to go to someone else for franchise approval. It's no longer within your sole discretion, is that right? A. That's true.

Q. So we have a certain territorial problem then, don't we, sales wise? A. Yes.

Q. Now, do you remember the 1964 Berkeley dealer show? A. Yes, I remember it. I will do my best to remember the thing that you want me to.

Q. Where was it held? A. At the Claremont Hotel.

Q. And in June of 1964? A. Yes.

Q. Mr. Shahood attended? [71] A. Yes.

Q. And you solicited a further order? A. Yes.

Q. And it was again a small order? A. Yes.

Q. Less than $7000? A. I believe so.

Q. And again it was on credit terms, 30, 60, 90 days? A. I believe that this is true, yes.

Q. Do you recall on that occasion attempting to talk to Mr. Shahood on behalf of Continental TV about the subject of the Maguire financing plan? A. I believe that this was made available to us at that time, yes. I mentioned it to George.

Q. You mentioned it to Mr. Shahood? A. Mr. Shahood.

Q. Now, Mr. Shadood was opposed to listening to this discussion of the Maguire financing plan, isn't that so, on that occasion? A. Yes, I was led to believe that?

Q. What led you to believe that? A. He said that he wasn't interested in the Goddamn financing plan.

[72] Q. Okay. And in fact he wouldn't even let you continue your sales pitch on the plan, would he? A. Well, this is true.

* * *

[73] Q. Okay, let me show you Exhibit G, which is a document entitled "Sylvania Dealer Inventory-Finance Plan, A New Concept In Dealer Financing." Just glance through it, Mr. French, and I will ask you two or three questions? A. Yes.

Q. Now at some point in time you have read the document, have you not? A. Yes.

Q. And it was contained in your sales manual at one time, at least, was it not? A. I believe it was.

Q. And in the first paragraph it says:

"The J. P. Maguire Floor Plan."

"The J. P. Maguire Floor Plan Program may very well have been instituted when the dealer was originally franchised. Despite this fact, a complete understanding of this plan, explained in detail in the accompanying literature, will still be important at this point. To begin with, this plan is a tremendous selling tool for you and offers a buying, inventory and 'no capital tie-up' advantage for the dealer.

"Outline it in this manner:

"1—With this plan, Sylvania finances their products in the dealer's store for four months FREE.

"2—The dealer pays as he sells—with no curtailment charges or payments prior to maturity.

[74] "3—Monthly statements are sent by J. P. Maguire to keep dealer up to date on account.

"4—At the end of a four month period, the dealer has the option of paying unpaid balance or extend financing for a 30 day period at ½ of 1 percent—this may follow on the second 30 day period.

"5—To control inventory, IBM cards are sent to cover each unit, serial number and cost. On the dealer's copy of the trust receipt schedule date of sale and the date of payment may be noted."

It continues on the second page:

"For a dealer to participate under this program, the following forms must be signed by the dealer principal. Responsibility for having these

forms signed and mailed to Area Credit Supervisor rests with the Sylvania District Sales Representative."

Now, the District Sales Representative in this case in your territory was yourself, correct? A. That is right.

Q. And then it lists several forms.

"1—The order—(Bill and ship to dealer)

"2—Signatory Authorization

"3—Dealer information form in triplicate

"4—Statement of Trust Receipt Financing in triplicate.

[75] "5—Personal Guaranty (if required)

"6—Franchise in duplicate

"7—Dealer Application in duplicate

"8—Financial and Operating Statement."

All right, now, so this plan is outlined in your sales manual as the plan that you were soliciting dealers to accept after June of 1964, isn't that so?

A. The word "soliciting" kind of throws me a little bit. I was proposing it to the dealer but as far as soliciting actually to force a dealer into it, no.

Q. You felt that it was an advantage for some dealers? A. To some dealers it would be an advantage.

* * *

The Clerk: Introduced and admitted in evidence.

[Inventory Finance Plan, marked Claimant's Exhibit G for identification was received in evidence.]

* * *

[81] * * * Q. What was the purpose of the dealer information form? A. To list the dealer himself and the location, I believe.

Q. Okay, all right. And this one is made up for Continental T.V., Incorporated, dated July 14, 1964, and it lists a corporation, Continental T.V., Incorporated, principal place of business: Stevens Creek Boulevard, and another place of business is on Santa Clara Street, and a third place of business is in San Leandro, so at this time there were three stores apparently franchised, is that correct? A. Yes.

Q. Now, was it the Sylvania policy to fill out one of these dealer forms every time a new store was franchised? **[82]** A. No, sir.

Q. It just so happened at the time that this document was prepared these stores were open and they were listed? A. That is true.

Q. As the Oakland or San Francisco store opened thereafter, they were not placed upon a sheet of this type? A. No.

* * *

Mr. Miller: Q. Now, as a matter of fact about the time that you left these documents which we just put into evidence with Mr. Shahood, you told him that the use of the Maguire would aid Continental T.V.'s expansion into a chain of stores, did you not? A. If it were approved by credit that this would be advantageous, I believe I did, yes.

Q. Right; in other words, you were just telling him simply what the fact was, isn't that right? **[83]** A. Right.

Q. And you believed it to be true? A. Providing, I—again, there is credit approval.

Q. Certainly. These questions I am asking you, you may assume that I am including in them subject to whatever credit review we find later from other witnesses is necessary.

So you did in substance tell Mr. Shahood of Continental that this would enable Continental T.V., at least enhance the possibility, increase the possibility of Continental T.V.'s expansion into this chain that Mr. Shahood was talking about to you, is that right? A. Yes, sir.

Q. Of course, at the time that you and Mr. Shahood discussed that type of an advantage connected with the Maguire Plan, Mr. Shahood still had not signed these documents, had he? A. No, sir.

Q. Of course, after the date appearing on these Maguire Plan documents, which is about the middle of July of 1964, I assume that the Maguire Plan was approved for Continental T.V., is that correct? A. To my knowledge, yes.

Q. And upon approval Continental placed its first substantial order, do you recall that? A. Yes.

[84] Q. It was a carload or more, was it not? A. I believe it was.

Q. Of course, the two previous orders were small, around six, seven thousand dollars? A. Yes.

Q. And, in fact, this merchandise was shipped to both franchise locations, there were three, there was a small store downtown but by both I mean San Leandro and Stevens Creek? A. I believe it was, yes.

Q. Okay, now, you heard more about San Francisco and Continental T.V.'s desire to operate a store

in that territory after the Maguire Plan was accepted, did you not? A. Yes.

Q. And you heard it from Mr. Shahood, did you not? A. I heard from Mr. Shahood?

Q. Yes. Sometime before the end of the year in 1964, did you not become aware of a specific location that Mr. Shahood wanted Continental to operate from in San Francisco? A. Sometimes in 1964, yes.

Q. Okay, and what did you do with that information when you heard it? A. I passed it on to Mr. Carroll.

Q. And you did so immediately, didn't you? [85] A. Yes, sir.

Q. Mr. Carroll was still your immediate superior? A. Yes, sir.

Q. I suppose he still is at the present time? A. Yes.

Q. And you told Mr. Carroll in substance that Continental had found a location on Geary Street? A. Yes, sir.

Q. This was before Continental had opened the store, right? A. Correct.

Q. What did Mr. Carroll say about this? A. I don't remember what he said. I think he wanted to look at it. It sounded all right or it sounded like a good location, or "Let's take a look at it." I can't remember.

Q. Now, at or about the time that you talked to Mr. Carroll about San Francisco for Continental, you did look at the location on Geary Street personally, didn't you? A. Yes.

Q. And you did not have any objection to Continental locating at that point or that location in San Francisco, did you? A. No.

Q. It was out of your territory? [86] A. Yes, sir.

Q. So you could have no discretion in the matter from a company policy standpoint, could you? A. No.

Q. It was in the hands of Mr. Carroll and perhaps somebody higher up? A. Yes, sir.

Q. Okay, do you recall that Mr. Carroll also looked at the location? A. Yes.

Q. Now, did Mr. Carroll ever voice any objection to you about Continental's location on Geary Street? A. Not to my knowledge.

Q. As a matter of fact, to the contrary, did he say that he needed help in San Francisco? A. I believe so.

Q. Right; in fact, previous to the time that you were told of the specific 3210 Geary Street location, Mr. Carroll had repeatedly asked you if Continental had found a location, or what was Continental doing about San Francisco; he had asked you about that previous to the location specification? A. It is possible that he asked me most any time that we had conversation if I had anything definite to report on it, yes.

[87] Q. As a matter of fact, he was quite anxious, was he not, to have Continental establish itself in San Francisco at that time, he expressed that to you? A. We are always anxious to get more dealer store locations, good dealer locations.

Q. And he expressed that to you, did he not? A. Yes, sir.

Q. Now after Mr. Carroll saw specifically the location himself, did he voice any objection to Continental's doing business there? A. No, sir.

* * *

[91] Q. I understood you to say, Mr. French, that it was your personal requirement that if it was not approved by the other territory salesman that you would not take the stocking order for the branch, is that your testimony? A. I would not take a stocking order for a branch location on someone else's territory.

Q. So simply what I am saying is, the other territory salesman's approval is necessary in such a situation such as that, to your knowledge? A. Yes.

Q. Is that correct? A. Yes.

Q. And as a matter of fact, didn't Mr. Carroll have that same policy in San Francisco in 1964? A. I believe so, right.

Q. And don't you also believe that Mr. Hines had that same policy in 1964 in his territory? A. I can believe that he has, I can't answer for Mr. Hines but I would assume that it would be that way.

Q. Was that your belief in 1964? A. I can believe that, yes.

Q. And it was your belief that these policies continued in these other territories in—from 1964 until the present time, isn't that right? A. I believe so.

[116] * * * Q. So after Mr. Carroll in this instance in San Francisco looked at the location and approved it for Continental's store, the only thing that

was necessary was for you to tell Mr. Shahood that it was an approved location, right? A. Yes.

Q. And then take an order if I needed one for that location? A. Yes.

Q. Now, as a matter of fact, a stocking order was placed and routinely sent through the credit department and shipped for the Geary Street location some time in late 1964, is that correct? A. I believe so.

* * *

[119] * * * Q. Okay. Now, the store on the east side of San Jose was on East Santa Clara Street? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. And Mr. Shahood talked to you about opening that store before it was opened and carrying Sylvania merchandise? A. Yes, sir.

Q. And you had no ojection to that location? A. No, sir.

Q. And Mr. Shahood then just moved some merchandise he had in his warehouse to the east Santa Clara Street store and started to display it, didn't he? A. Yes, sir.

[120] Q. And that was with your permission? A. Yes, sir.

Q. And you didn't send any written notification to Mr. Carroll, your boss, did you, that this store was being franchised? A. No written notification, no.

Q. That's not necessary under your policy, is it? A. Not necessary to send a written notification, no.

Q. And it wasn't necessary in 1964 or 1965 to send a written notification to Mr. Carroll, was it? A. Not to my knowledge.

Q. And what you did do, however, was merely verbally tell Mr. Carroll that this location was going to be franchised on the East side of San Jose in substance, isn't that what you did? A. Yes, sir.

Q. And Mr. Carroll didn't have any objection to it, did he? A. No, sir, he didn't express any objection.

Q. Of course, this was still within your own territory, the East side of San Jose, correct? A. Yes, sir.

Q. In fact, of the four locations I pointed out to you that Continental was operating and from which Sylvania [121] was selling Sylvania merchandising in 1964, only one was outside your territory, and that was the San Francisco Geary Street store, correct? A. Yes, sir.

Q. You say Mr. Carroll visited the Geary Street store. What was his reaction to that store? A. Very favorable.

Q. Did he make any comments to you or indicate to you in any way as to what he thought of the size of the store, its decor, the way Continental was displaying merchandise, any of these things? A. He was very impressed with the store, the layout, the decor, yes.

Q. Personnel? A. I don't believe that he made any comment on personnel. That I don't recall.

Q. Was Continental displaying a full representative line of Sylvania's merchandise? A. They were representing Sylvania quite well.

Q. In the Geary Street store? A. Yes.

Q. In Stevens Creek? A. Yes.

* * *

[136] * * * Q. So by December, by the end of 1964, Continental had five facilities operating in that they had had a Mission Street store, the Stevens Creek to there east of San Jose, to the fact that they had their Earl Street warehouse, and of course, the Geary Street store, they had all those facilities and you were familiar with those facilities, were you not, sir? A. Yes sir.

Q. Now, you also knew in 1964, sir, that Continental [137] TV commonly moved merchandise between the stores itself. In other words, they would take a truck if they needed sets at the Geary Street, they would take sets as they were available from the warehouse and from the Stevens Creek store and truck them up here themselves? A. Yes sir.

Q. And so commencing sometime in the late summer of 1964 you had knowledge of the fact that Continental was doing this intrastore transfer of merchandise? A. Yes sir.

Q. And did you ever have any objection to that? A. No sir.

Q. In other words, this was merchandise that Continental had purchased from Sylvania, correct? A. Yes sir.

Q. And had paid for under the Maguire plan. A. Yes.

Q. And they were taking this merchandise and using some of it in San Francisco and if they needed to they would truck it from San Francisco down to San Jose or even to a warehouse, correct? A. It is possible. I don't know of ever taking any merchandise from a store back into the warehouse.

Q. That's right, because they were selling a very large volume to the public by the end of 1964, isn't that [138] correct? A. Yes sir.

Q. And in other words, the orders that were being shipped by rail, as they came in they were processed through Continental's warehouse, sent out to Continental stores and sold, isn't that what was happening? A. That was the usual procedure.

Q. Right. Now, it was common and is common and still is common for dealers with branch stores to move merchandise back and forth? A. Yes.

Q. And Sylvania has no policy which restricts a dealer in such conduct? A. Not to my knowledge.

Q. You have no personal policy to so restrict a dealer? A. No sir.

Q. But it was necessary for each of those locations where merchandise was moved by the dealer to be franchised, isn't that right? A. As far as I am concerned, yes sir.

Q. That's right. In other words, if dealer X had two locations and you had franchised, let's say, his location in Hayward but you had not franchised his location, let's say, in Berkeley, and he moved sets from Hayward to Berkeley to the [139] non-franchised outlet, that would be against your policy, would it not? A. Against my procedures.

Q. Yes. Against company procedures correct? A. I—I absolutely am not sure on that part of the policy. I believe it is necessary to have a franchise in each location.

Q. Well, Mr. French, the company in 1964 and 1965, the Sylvania company, did not offer chain franchising? A. No.

Q. That is a true statement? A. This is right.

Q. And chain franchising means what, sir? A. To my knowledge, it means franchising one buying office that can ship all over the United States to any store location they want, I guess.

Q. That's right. In other words, chain franchising means that once you make a franchise with a man he could open branches anywhere and you would have no control over it? A. That's basic, yes.

Q. And that's not what Sylvania policy was in '64 and '65? A. That was not their policy, yes.

Q. Not allowed by Sylvania, correct? A. As far as I know we were dealing with individuals.

[148] * * * Q. Now, Mr. French, by the end of 1964 would you say **[149]** it is a fair statement that Continental became or was at that time an important dealer to Sylvania? A. It was very important to me.

Q. How about your company? A. I believe that it could be considered as important to the company also.

Q. Had you ever had a dealer either in New York or since you have been out here in California whose credit line had gone from $15,000 to $300,000 in nine months? A. No, sir.

Q. In your opinion, sir, in 1964 did Continental's efforts increase Sylvania's penetration in Northern California? A. Yes.

Q. As a matter of fact, what portion of your total purchases in your total territory did Continental account for in 1964, would you say? A. Possibly pretty close to 50 percent.

Q. As you say, all orders were at least carload after Maguire's plan was accepted? A. Yes.

Q. Now, was the color TV market becoming important in your business in 1964 compared to what it had been in 1963? A. The latter part of 1964 I believe it was becoming an important factor.

* * *

[165] * * * Q. Now, you have already covered for me Sylvania's policy against chain franchising. Now, in 1965, it is a fact, is it not, that Continental T.V. opened additional branch stores? You're aware of that? A. Yes.

Q. In fact, they opened a store in Oakland, did they not? A. Yes.

Q. They opened a larger and more spacious store in San Jose, a warehouse in San Jose, didn't they? A. Yes.

Q. They opened a store in Salinas? A. Yes.

Q. They even opened a store in Seaside, California? A. Yes.

Q. They opened the store up that used to be the rain store—they reopened 177 West Santa Clara Street in San Jose? A. Yes.

Q. You were certainly aware of all these openings, were you not? **[166]** A. Yes.

Q. Let's take the Oakland store first. That was opened in about March of 1965? A. I believe so.

Q. All right, sir.

And since Sylvania does not franchise chains, it was necessary for Mr. Shahood on behalf of Continental T.V. to seek Sylvania approval for that location

before he could merchandise Sylvania from it, right? A. Yes, sir.

Q. And since that location in Oakland was not within your territory, you weren't authorized to franchise it for him, were you? A. That's right.

Q. So he would have to talk to either Mr. Hallday whose area it was or to Mr. Carroll who supervised the territories in general, correct? A. Right.

Q. And as a matter of fact, after you learned about the location proposed by Continental in Oakland, did you discuss it with Mr. Carroll? A. Yes, sir.

Q. And did Mr. Carroll have any concern with the location of other Sylvania dealers around the area? A. He didn't express any to me.

[167] Q. He only wanted to know one thing, and that was, where was that store going to be located? A. Yes, sir.

Q. He didn't ask you about anything else, did he? A. No.

Q. And you told Mr. Shahood after talking to Mr. Carroll—strike that. Mr. Carroll didn't have any objection either, did he? A. He didn't express any objection.

Q. Do you understand, or did you understand at that time that Mr. Carroll had approved that location for Continental in Oakland? A. That was my understanding.

* * *

[170] * * * Q. All right. Mr. French, we have talked for about a day now about franchisers. What

did it mean to the dealer after you told him that he was franchised as a Sylvania dealer? What did that mean to him? A. That he was franchised as a Sylvania dealer. It meant basically that he could sell Sylvania products from that location.

[171] * * * Q. I will withdraw the question. Is it not a fact, Mr. French, that other than entitling the dealer to sell your product from that location, the franchise doesn't mean one other thing to him? A. As far as I know.

Q. As far as you know, that is correct, is it not? A. That is correct.

* * *

[182] * * * Q. All right, sir. Let me put it this way: In 1964 did your company grant exclusive franchises as a policy? A. No sir.

Q. And they did not in 1965 either, did they? A. Not to my knowledge.

Q. And to your knowledge that was their policy in your territory, in Mr. Hines' territory, Mr. Hallday's territory, as far as you know and all the rest of the territories? A. As far as I know there was no policy against—for or against exclusive franchises. I know of no policy.

Q. It was not a policy of your company to grant them? A. Yes. No, I don't know. There is no policy as far as exclusive franchising.

Q. You say there was no policy. Do you mean there was no policy one way or the other; that sometimes you granted them and sometimes you did not? A. I don't know of any policies that were granted.

I don't know of anyone that was refused one. I don't know of any such instances.

Q. Let's talk about that a minute, Mr. French. Since January of 1963 did you ever tell a dealer he had an exclusive franchise in any given territory? **[183]** A. No sir.

Q. To your knowledge has Mr. Hines ever told anyone that he had an exclusive franchise in his territory? A. Not to my knowledge.

Q. Has Mr. Hallday ever told that to any dealer, to your knowledge? A. Not to my knowledge.

Q. And has Mr. Carroll ever granted, as your immediate superior, an exclusive franchise to any dealer in any territory that you knew about? A. Not that I know of.

Q. What do you mean by an exclusive franchise as we have been using the term? A. As an exclusive franchise I am guessing it would be that there would be no other dealer ever solicited in that area, that you have an exclusive franchise to sell a product.

Q. In other words, that you would promise that dealer not to put on another dealer in that territory, would that be correct as a definition of exclusive franchise? A. As a broad statement I would say yes.

Q. That is what we are talking about, is it not? A. Yes.

* * *

[236] * * * Q. Now, did you solicit further orders from Continental T.V. after that last telephone conversation? A. Yes, sir.

Q. As a matter of fact, you were having—I say you—**[237]** Sylvania was having a local San Francisco show of their 1966 line about that time? A. Yes.

Q. What was the purpose of the local show? A. To introduce the new line of merchandise to the local dealers that were unable to attend the Chicago convention.

Q. The dealers were not invited to the Chicago convention? A. Yes.

Q. And at or near the time of that show, you solicited a $50,000 order from Mr. Shahood by phone? A. I believe it was in that neighborhood.

Q. And later you contended to review that same order with him in San Jose? A. Yes.

Q. And it was finally raised to about $63,000, $64,000, correct? A. I believe so.

Q. All right, sir. Let me show you Exhibit P and ask you if you recognize that document. A. Yes.

Q. Now, at or near the time—strike that.

This Exhibit P is what, sir? Is that the July order **[238]** that Mr. Shahood gave you on behalf of Continental? A. Yes, sir. It is dated July 20, I believe.

Q. And that's a dollar amount shown on it, is it not, $63,658.91? A. Yes.

Q. Is that the order you solicited and finally got from Continental T.V. in late June or early July? A. Yes, sir.

Mr. Miller: We would offer this as Claimant's next.

Mr. Popofsky: No objection.

The Court: Admitted.

The Clerk: Claimant's P admitted in evidence.

[Document above referred to was marked Claimant's Exhibit P for identification.]

* * *

[242] Did you solicit any orders after the July order? A. I believe I did, yes.

Q. I show you a document marked as Exhibit R. Please read that over to yourself. A. Yes, sir.

Q. What is the date on that order? A. August 27.

Q. And that was really written up in the form of two orders, was it not? A. Yes.

Q. And one order was for immediate shipment? A. Yes.

Q. And one was to be shipped after October, October 10th? A. Yes.

Q. Did you take this order? A. Yes, sir.

Q. Mr. Shahood signed this as you did the previous July order? A. Yes, sir.

Mr. Miller: I offer this, Your Honor, as Claimant's next in order.

Mr. Popofsky: No objection.

The Court: Admitted.

The Clerk: Exhibit R introduced and admitted in **[243]** evidence.

[Shipment orders, marked Claimant's Exhibit R for identification was received in evidence.]

Mr. Miller: Q. All right.

So this Exhibit R, this August 27 order, was for about $112,000, merchandise to be split-shipped, correct? A. Yes.

Q. So we had a July 3rd order for $63,000 and now we have the August 27th order for $112,000 to be split-shipped or about $175,500 worth of Sylvania merchandise which Continental ordered after the June convention, correct? A. Yes, sir.

Q. All right.

Now, did—the July order, Exhibit P, was that routinely processed? A. To the best of my knowledge.

Q. To the best of your personal knowledge? A. Yes.

Q. And did you send it to Mr. Lopolito of the—the credit man in Los Angeles? A. I believe I did.

Q. And to your knowledge was it processed routinely there and sent on for filling at the factory? A. I believe so.

[248] * * * Q. Now, Mr. French, when did you first become aware that Continental was proposing a Sacramento location? A. It had been mentioned—I am not exactly sure when.

Q. All right, sir.

I refer you to page 406 of your deposition, starting **[249]** at line 15.

"Q. Now, Mr. French, when did Mr. Shahood first tell you that he planned to open a Sacramento store?

"A. That was before we went back to Chicago.

"Q. Would it be before June?

"A. It was before June.

"Q. Can you recall from the month when you were first told that he planned to open a Sacramento store?

"A. I believe it was in—I can't say for sure—sometime in March, I believe, somewhere in that area."

Mr. Miller: Q. Would that refresh you, sir, to some extent as to when you first learned of it; sometime in March or spring of 1965? A. Yes.

Q. When did you first hear about a proposed Sacramento location for Continental T.V.?

Did Mr. Shahood tell you that he was proposing to sell Sylvania products there? A. No, sir.

Q. What products did he talk about handling at that time? A. Philco, primarily.

[250] Q. Also Motorola? A. Motorola.

Q. What did you do with this information in March of 1965? A. I believe I informed Mr. Carroll.

Q. That's right.

You relayed this information to Mr. Carroll, regional sales manager, pretty much immediately, didn't you? A. I believe so.

Q. Okay. And as a matter of fact, didn't you tell Mr. Shahood on that occasion that that was all well and good in substance, but that if he had planned to sell Sylvania in Sacramento that he certainly could not do so without the permission of Mr. Hines? A. I don't know whether Sylvania was even brought up at that time.

Q. That certainly was the fact of the situation, was it not, that if Continental did intend to sell Sylvania merchandise in Sacramento that Mr. Hines, the district sales manager for that territory, would have to be contacted and approved? A. Yes, sir, I believe that's right.

Q. Now, didn't you in fact tell Mr. Hines, the Sacramento salesman—when you were at the Chicago convention that Continental might possibly open a Sacramento store? [251] A. I believe I mentioned it to him at the convention.

Q. What did Mr. Hines respond to you? A. I don't remember any response at that time.

Q. Didn't he say in substance he didn't know what could be done about it? A. I don't remember what his response was. I don't remember, really.

Q. I refer you to page 410 of your deposition, commencing at line 1.

"Q. Do you remember any discussion between the people I mentioned concerning Sacramento at all at any time at the Chicago convention?

"A. Not in any group meeting such as that. I don't remember any meeting at that time. I talked to Mr. Hines and said that there was a possibility that George Shahood might approach him on the possibility of a franchise for Sylvania in Sacramento.

"Q. And what did Mr. Hines say to that?

"A. I don't remember his exact words, something about how it could be worked out at the present time, or he didn't know what could be done about it.

"Q. Did he tell you why?

"A. I don't believe that he mentioned anything as to why. He handles his territory the same as I [252] handle mine; to the best of his ability and where he can get the best terms on the merchandise and exposure in his territory."

Mr. Miller: Q. Now, these questions, of course, were asked and you gave these responses under oath. Does that help refresh your recollection? A. Yes, I believe so.

Q. As far as you knew Hines followed the elbow room policy in his territory as you did in yours? A. Hines handles his territory the way—as I handled mine, I believe.

Q. All right sir.

* * *

[255] * * * Q. All right.

Now, Mr. French, in 1964 or 1965, did you have any dealers in your territory that in the usual course of business sold products in Sacramento? A. No, sir.

Q. Do you know of any dealer in San Francisco —strike that—in Mr. Hallday's territory in either of those years that in their normal course of business had a store in San Francisco but sold television sets to people in Sacramento? A. Not to my knowledge.

Q. Would your answer be the same for Oakland and Salinas? A. Yes, sir.

Q. Isn't it a fact, sir, that it is just economically not practical for a dealer to try to sell to people, let's say, over a distance of 50 or 75 miles away from his

store [256] and also service the sets and do the other things that are necessary? A. It is not economically feasible, but some dealers do it.

Q. To your knowledge Continental T.V. never attempted to do anything like that, did they? A. Yes, sir.

Q. How far would you say Continental T.V. attempted to serve its customers in volume from there—— A. In volume. Now, you see, you stated two different questions.

Q. What I am asking is simply this, Mr. French. You were pretty much personally aware of the volume of sale that Continental had in 1965, weren't you? A. Yes.

Q. You knew that they were selling several hundred sets a month? A. Yes, sir.

Q. What I am saying is that it is a fact, is it not, that Continental T.V. could not do that kind of volume in Sacramento from a location in San Jose? A. Would you state the question again, please.

Q. I am simply asking you is it not economically impossible or impractical, based upon your knowledge of this industry, for a dealer located in San Jose to sell [257] at a volume of several hundred sets a month to customers located in Sacramento? A. I would say that it is impractical, yes.

Q. Would your answer be the same if I asked you about a dealer located in San Francisco selling to a Sacramento audience? A. Yes, sir.

Q. Would it be the same if I asked you about an Oakland location? A. Yes, sir.

Q. Or a Salinas location? A. Yes, sir.

Q. Now, getting into August of 1965, of course, you received this large order, Exhibit R, for $112,000. Were you calling on Continental stores frequently? A. I believe I was.

Q. And did Mr. Shahood during the month of August again mention to you the fact that he was going to open a store in Sacramento? A. I believe he did.

Q. In fact, he told you that it would be open about the first week in September, didn't he? A. I believe so.

Q. Didn't he also tell you that he was planning a store in Vallejo? [258] A. Yes, sir.

Q. About the same time? A. Yes.

Q. He told you he had a lease for it and it would be soon open? A. Right.

Q. And he was planning to open the Vallejo store after the Sacramento opening, was he? A. I believe that was his plans.

Q. Now, as of August of 1965, had you told Mr. Shahood that he could not display and sell Sylvania sets in Sacramento without clearing the franchise with Hines? A. I don't know whether I did or not.

Q. You could have? A. I could have.

Q. That was the fact, of course, wasn't it? A. That's not my territory. I have no jurisdiction.

Q. I'd like to refer to page 444 of the deposition of Mr. French, line 2.

"Q. On this occasion did Mr. Shahood tell you he planned to open a Sacramento store around September 1st?

"A. That he planned to open a Sacramento store—

"Q. Around September 1st.

"A. Around September 1st, right.

[259] "Q. And he also told you that he had planned to have the Vallejo store opened soon thereafter, did he not?

"A. Right.

"Q. Now, previous to this date you had told Mr. Shahood, had you not, Mr. French, that he could not move Sylvania products into Sacramento?

"A. I had told Mr. Shahood that I have no control over the Sacramento area territory. And if he ever planned to use Sylvania in Sacramento, the franchise would have to be negotiated with Mr. Hines. As far as I can remember he was not still planning to use Sylvania merchandise in Sacramento."

Mr. Miller: Q. So, does this help refresh your recollection that you probably did tell Mr. Shahood previous to this August date? A. Yes.

* * *

[263] * * * Q. Okay. Now, you weren't aware of any credit problems of Continental as of late August, were you? A. No, sir, I don't believe so.

Q. You got the order here, Exhibit R and had that approved and Mr. Popolito was contacted? A. Yes.

Q. Everything was working pretty normally? A. Yes.

Q. As of August 27? A. I believe so.

Q. Mr. Steiner, when he was contacted about approving the mix of 25 H color sets on the August order, hadn't indicated any kind of payment problems? A. No, sir.

Q. Credit problems? A. No.

Q. Would this situation be the same if I asked you as of the first week in September? A. I believe so.

Q. You weren't aware, at least of your own knowledge, you weren't, of any problem with Continental, were you? [264] A. I don't believe so.

Q. You had not received any notification from Maguire about any unhappiness with Continental, had you? A. No, sir.

Q. You hadn't received any information from your own credit department about any unhappiness with Continental as of the first week in September, had you? A. No.

Q. Okay. Now, Mr. French, when were you first aware that Continental was actually in Sacramento at 1870 Fulton Avenue with Sylvania merchandise on the floor? A. I believe it was when Mr. Shahood called me.

Q. Do you recall the date? A. I don't, no.

Q. Early September? A. I believe it was the first part of September.

Q. All right. And what in essence did Mr. Shahood tell you at that time? A. I believe that he said that he had shipped some merchandise into Sacramento and was awaiting a clearance of a franchise, or something to that effect.

Q. That's right, Mr. Shahood called you, said "I have got my store open in Sacramento and I have shipped, as is our custom, merchandise for floor display and requesting franchise approval"? [265] Mr. Popofsky: Your Honor, he asked that question, with a precise answer and now there is a complete recapitulation by counsel. I object to it.

The Court: I think you did put quite a few condtions on, Counsel.

Mr. Miller: Very well, Your Honor. Let me withdraw it.

Q. I want to be sure the record is clear as to what you said, Mr. French. So you're saying Mr. Shahood on this occasion requested franchise approval for Sacramento? A. I believe so.

Q. Did he mention Vallejo? A. I am not sure whether that was mentioned then at that time or not. It was mentioned, I believe, before then. I am not sure whether it was restated then.

Q. All right. Up until this time have you ever known of any other dealer in your territory that had requested a franchise for Sacramento? A. Not to my knowledge.

Q. Up until that time had you ever known a dealer in Mr. Hallday's territory, San Francisco, that had ever requested a Sacramento location? A. I couldn't be sure. I don't know.

Q. What did you tell Mr. Shahood in response to [266] learning for the first time that Sylvania merchandise was in fact at 1870 Fulton Avenue in Sacramento? A. I told him that that would have to

be a franchise, or negotiated with Mr. Hines, I believe, in Sacramento. I believe that's it.

Q. Let's back up a minute. Did you tell him you would have to be approved at that location by Sylvania, in substance? A. I don't believe so. I believe I said that—I'm not sure, whether it was negotiated with Mr. Hines or approved franchise. I had no jurisdiction over that, that's all I know.

Q. Okay, and that's what you said in substance to him, is that right? A. Yes.

Q. You had no jurisdiction in Sacramento? A. Yes, sir.

Q. And you told him he would have to get the franchise approval from Mr. Hines? A. Yes, sir.

Q. Okay. Didn't you also tell him that if he remained in Sacramento with Sylvania merchandise against your company's wishes that he would jeopardize the orders that he had already placed with his company? A. That he would jeopardize his relationship with me.

Q. Did you tell him on that occasion that he would [267] jeopardize the fulfillment of the orders previously placed and accepted? A. I don't believe so.

Q. Did you tell him that if he maintained sets in Sacramento against Sylvania's wishes he would possibly jeopardize the entire relationship which would be a very poor thing to do because of the scarcity of color sets? A. I may have said something to that effect, yes, sir.

Q. What did Mr. Shahood respond when you expressed—explained these things to him? A. He said

if he couldn't get a franchise in there that he would bring the sets back.

Q. Guess he would have to bring them back? A. That he would bring them back.

Q. All right. He told you that? A. He told me that he would bring them back.

Q. Okay. And is that about the entire substance of that first telephone conversation? A. I believe so.

Q. Did you ever tell Mr. Shahood if he intended to stay in Sacramento against the wishes of Sylvania that he should wait until he received all the previous orders that he had made? A. I don't remember it.

Q. I would like to refer you to Page 445 of Mr. [268] French's deposition, commencing at Line 4.

"Q. Didn't you tell Mr. Shahood previous to this August 16 meeting that if he had to display and sell Sylvania products in Sacramento to at least wait until his previous orders had been shipped and delivered before he made any move in that direction?

"A. I——"

Mr. Miller: If Your Honor please, I am going to read the answer the way it was originally given under oath and transcribed and then I will read the answer the way it has been corrected by the witness.

The Court: Very well.

Mr. Miller: The original answer as transcribed under oath:

"I told Mr. Shahood that he should wait until any orders were placed and shipped before he

even made any request for Sylvania franchise in Sacramento, if he so desired."

Q. Now, you were given an opportunity to correct this deposition some weeks after you were deposed, Mr. French, you remember that? A. Yes, sir.

Q. This is one of the passages that you corrected. I will read the correction next.

"A. There was no reason for such a statement at [269] this time. No franchise had been requested for Sacramento and all orders were being shipped."

Now, sir, then between the time of your first answer and the time you corrected that passage did you talk to counsel? A. No, sir, I don't believe so.

Q. Did you talk—— A. I believe in reading the deposition that the formation of chain of events made it unnecessary to make that answer.

Q. All right. A. And it just didn't fit into the sequence of operational questions, to the best of my knowledge.

Q. The first answer I read to you, Mr. French, is the answer you did in fact give under oath in the deposition, isn't that right? A. I believe that it is.

* * *

[270] Q. Do you remember when you told Mr. Shahood that he should consider whether or not he was jeopardizing his entire relationship over the Sacramento issue? A. Yes, I believe I remember.

Q. What you meant by that was that he should assure himself that Mr. Hines was going to give him

approval because you did not have the authority to make that approval yourself? A. I had no jurisdiction.

Q. That is right, but isn't that what you told Mr. Shahood? A. I told Mr. Shahood that I did not have any jurisdiction in Sacramento.

Q. And that if he went ahead without getting Mr. Hines' approval he might consider jeopardizing the entire relationship, correct? A. With me.

Q. What did you do after talking to Mr. Shahood and learning that the merchandise was in Sacramento? A. I believe I called Mr. Steiner on that day.

Q. That's right. But before that you called Mr. Hines, didn't you? A. I don't believe so.

Q. Pardon? A. No, sir. Again, what day is it that I am talking about here?

[271] Q. I am talking about the next thing you did after you talked to Mr. Shahood and found out that sets were up there in Sacramento? A. What day was it that Mr. Shahood called me?

Q. You placed it on September 3 in your deposition. A. Which is on what day?

Q. That would be a Friday. A. A Friday. Then I called Mr. Steiner before I called Mr. Hines.

Q. I refer you to Page 481 of your deposition, starting at Page 7:

"Q. Was there any further conversation concerning this matter that you recall that you had with Mr. Shahood on this occasion?

"A. Not that I recall.

"Q. Now, two days later on a Sunday, September, 1965, you phoned Mr. Hines in Sacramento to discuss this thing, didn't you?

"A. I phoned Mr. Hines and said that there was merchandise in, that George had moved some merchandise in Sacramento.

"Q. That was on Sunday, September 5?

"A. Right."

Does that refresh your recollection? A. I knew I called Mr. Hines on Sunday. If I called [272] somebody else before—immediately afterwards was the question you put to me, immediately afterwards. I talked to Mr. Shahood, I called somebody, I couldn't have called Hines immediately after. One was on Friday and one was on Sunday.

Q. Do you recall calling anyone else between the time you talked to Mr. Shahood on Friday and the time you called Mr. Hines on Sunday? A. I am not sure if I called Mr. Steiner now or not.

Q. Okay. Let me move on to Sunday's conversation. You called Mr. Hines. You—he is your counterpart in Sacramento? A. Yes, sir.

Q. And you for the first time told Mr. Hines that Continental had Sylvania merchandise in his territory, correct? A. I believe that was the first time, yes.

Q. Did Mr. Hines give any indication that he had known of this before your call? A. No. sir.

Q. Did you tell Mr. Hines that Continental T.V. was requesting a franchise for the Sacramento location? A. Yes, sir.

Q. And did you mention also that—Vallejo? A. I believe that I did, I am not sure.

[273] Q. All right. And Mr. Hines responded in what manner? A. I believe that he said he didn't know what could be worked out at that time due to the commitments that Handy-Andy had made to him.

Q. Said he didn't know what could be worked out because of commitments which Handy-Andy had given him? A. Or with—yes, I believe so.

Q. Did he not say because of commitments which he had given Handy-Andy? A. No, sir.

Q. Did he mention Keith Anderson's name in that conversation? A. I couldn't be sure whether it was Keith Anderson or Handy-Andy.

Q. Keith Anderson is the owner of Handy-Andy, right? A. Yes, sir.

Q. You knew that at that time? A. Yes, sir.

Q. You also knew that he was the major Sylvania dealer in Sacramento? A. Yes, sir.

Q. Did Mr. Hines in this telephone conversation on Sunday offer to work out any meeting between the dealers or any other kind of accommodation?

[274] A. I don't believe so.

Q. Didn't talk about it? A. I don't remember any conversation.

Q. Now, you recall any other thing about that Hines conversation on Sunday? A. No, sir.

Q. Okay. Now, do you recall that it was after talking to Hines on Sunday that you talked to Mr. Steiner in Batavia? A. It is very possible. I don't know the sequence of those calls.

Q. So on Friday, try to straighten the sequence out for you, on Friday you talked to Mr. Shahood?

A. Evidently it was in the late afternoon that Mr. Shahood called me.

Q. On Sunday you talked to Mr. Hines in Sacramento? A. Yes.

Q. Correct? A. Yes, sir.

Q. Monday was a holiday, Labor Day, correct? Remember that? A. If you say so. I don't remember.

Q. If you don't, tell me. All right. Tuesday, then, was the first day—

Mr. Popofsky: Stipulate that Monday was a holiday.

[275] Mr. Miller: Thank you.

Q. Tuesday was the first work day in that week. Will that help you to refresh your recollection in this period? A. Yes, I think so.

Q. All right. And do you recall that on that first work day the 7th of September, you placed a call to Batavia? A. Yes.

Q. You talked to Mr. Steiner, the national sales manager, correct? A. Yes, sir.

Q. You told Mr. Steiner that Continental had moved sets into Sacramento and was requesting a franchise for Sacramento and Vallejo, did you not? A. I believe so.

Q. Did you tell him that you had just talked to Hines two or three days previous? A. I think I did.

Q. Did you tell him what Hines had indicated to you? A. I believe so.

Q. What did Mr. Steiner say? A. Something like he'll get back to me, or something like that. I don't believe I got any direct answer at that time.

Q. He said in substance, did he not, "I will check into this and get back to you"? [276] A. I believe that he did.

Q. Okay. And did you hear from Mr. Steiner again the same day? A. I believe so.

Q. Still September 7. A. I believe so.

Q. About how long after your first call, any recollection? A. I don't remember.

Q. A couple of hours? A. Probably two to three hours, I couldn't say.

Q. What did Mr. Steiner, what did he tell you, what did Mr. Steiner tell you when he called back? A. I believe he said that it couldn't be worked out at that time for Sacramento, that there was a possibility of Vallejo and what was Mr. Shahood going to do with the merchandise that he had in Sacramento, if I recall.

Q. All right. Did Mr. Steiner in fact tell you that it was impossible to franchise Sacramento for Continental at that time? A. I believe so. I don't know.

Mr. Popofsky: If Your Honor please, he just gave a precise answer in his own words and now he is restating it. This is cross-examination, but that isn't testifying through the witness.

[277] Mr. Miller: Your Honor, I am trying to make this as precise as I can because it is rather crucial.

The Court: Said it could not be worked out, was the phrase he used.

Mr. Miller: I am trying to point out to the witness what Mr. Steiner actually said, was that it was

impossible. I suppose you can use them as synonyms, but they may have some stronger meaning one way or the other.

The Court: Is that the word in the deposition?

Mr. Miller: Yes, sir.

The Court: You might read it.

Mr. Miller: Let me do that, commencing at Page 485, Line 5:

"Q. Did Mr. Steiner say anything before he said he would phone you back?"

This is the previous call.

"A. No, he said he would get back to me on it.

"Q. How long a period elapsed between that phone call and Mr. Steiner returning the call?

"A. I don't remember; a couple of hours, possibly.

"Q. Do you have any information as to who Mr. Steiner talked to in that interval?

"A. No, I do not.

"Q. But Mr. Steiner did call back the same day, I take it?

[278] "A. Yes, I believe so.

"Q. And what did he say?

"A. He said that it was impossible at the present time to grant a franchise for Sacramento, that they would like to negotiate with George for a Vallejo franchise.

"Q. Did they say why it was impossible?

"A. No.

"Q. Did he say anything else?

"A. No.

"Q. What did you say?

"A. Nothing, that I know of. I can't recall anything."

Now, does that help refresh your memory, sir, as to what term or terms Mr. Steiner used when he spoke of the franchise situation in Sacramento? A. He could have said impossible, yes. Or I could have used the word myself.

Q. Now, as a matter of fact, you haven't known until this day who Mr. Steiner may have talked to in that interval? A. No, sir.

[Continued on next page; nothing omitted.]

[279] Q. Okay. Now, what did you do after you talked to Mr. Steiner a second time and found out that it was impossible to franchise Continental in Sacramento? A. I called George back, I believe.

Q. Okay. And you in substance told him exactly what Mr. Steiner had told you? A. Yes.

Q. And you told him further that this had come from Mr. Steiner? A. That's what had come from Mr. Steiner.

Q. Let me back up.

You talked to Mr. Shahood after the second Steiner call. You told Mr. Shahood that Mr. Steiner had told you that it was impossible to franchise Continental in Sacramento, isn't that right? A. If those are the words I used, yes.

Q. In—my only point was that you told Mr. Shahood on that occasion that that decision had been made by Mr. Steiner? A. Yes.

Q. Now, Mr. Shahood responded that in the interim he had talked to his attorneys, isn't that right?

A. Yes.

Q. And that he had been advised that Sylvania could not dictate to Continental respecting the locations where [280] they could sell merchandise? A. I expressed his feelings on that, yes.

Q. And he told you also that Continental was going to sell merchandise in Sacramento and specifically was going to sell Sylvania merchandise, correct? A. I believe he did.

Q. And this still was on the same day, was it not, September 7th? A. Yes.

Q. Did you tell him the part about the possibility of being granted a Vallejo franchise? A. I think I did.

Q. Okay.

Now, what did you do after learning from Mr. Shahood that Continental T.V. was going to break away from this pre-approval of franchise locations? Did you talk to anyone else in your company? A. I don't believe so at that time.

Q. Don't you recall, sir, that you again called Mr. Steiner, your third conversation with him on the 7th? A. I may have. I thought you said someone else.

Q. I am sorry.

You again talked to Mr. Steiner, do you call, phoned him back? A. Yes.

[281] Q. And in substance what did you tell Mr. Steiner? A. Mr. Shahood had the merchandise in Sacramento and would not fulfill his promise to me to bring the merchandise back.

Q. And you also told him that Continental had received legal advice, didn't you? A. Yes, sir.

Q. Okay. Mr. Steiner in substance told you in response to that that you would have no further contact with Continental T.V. or Mr. Shahood, did he not? A. I am not sure.

Q. I would like to refer to Page 491 Line 10.

"Q. Now, in the same telephone conversation Mr. Steiner told you also, Mr. French, did he not, to have no further contacts with Continental representatives and to have your phone calls screened?

"A. Yes.

"Q. He told you not to talk to any Continental people, did he?

"A. He told me not to have any contact with Mr. Shahood specifically."

Now, you made those responses, sir? A. I did, but I am still not sure that it was Steiner or John Morgan.

Q. You talked to John Morgan a few days later after [282] the Steiner calls? A. That is true. I believe it was John Morgan that told me not to have anything to do with it. Honestly, it is in the deposition as such, but I think by reading further in the deposition that it clarifies itself. It did to me

Q. John Morgan, sir, was the vice-president in charge of sales for your company? A. That is right, sir.

Q. And that's the gentleman you just referred to? A. Yes, sir.

Q. And you in fact did have a telephone conversation with Mr. Morgan some six days after these telephone calls with Mr. Steiner, didn't you? A. Yes, I believe I did.

Q. You are telling me now that despite what you said in your deposition you don't know at this point whether Mr. Morgan told you to screen your calls and stay away or Mr. Steiner told you that, is that right? A. That is right.

Q. Didn't you learn about the same time from Mr. Lopolito, the credit man, that his boss had given him the same instructions about the same time to screen his calls and to stay away? A. Whatever the time was, yes.

Q. You learned that, didn't you? **[283]** A. In the same sequence, yes.

Q. Now, Mr. French, besides Continental T.V., do you have any personal knowledge of any other dealer in your territory who ever tried to sell merchandise from a location that was not franchised? A. Not to my knowledge, no.

Q. How about Robert E. Lee? A. Oh, yes.

Q. As a matter of fact, Mr. French, since you have been in California from January 1963 to the present time, there are only two dealers who ever tried to display and sell merchandise from a non-franchise location to your knowledge; isn't that right? A. Yes, I believe so.

Q. And those two dealers are Continental T.V. and Robert E. Lee; is that a fair statement? A. Yes, sir.

Q. I am going to talk to you about Robert E. Lee.

Was Robert E. Lee a franchise dealer when you got to California in January of 1963? A. He was dealing with Sylvania merchandise, yes.

Q. And he was one of the dealers that you franchised initially, correct? A. Yes.

Q. What was his other store? **[284]** A. In Hayward.

Q. That was his branch store, wasn't it? A. Yes, sir.

Q. And he had a main store also? A. Yes.

Q. Where was that located? A. Berkeley.

Q. So in 1963 did you franchise both stores or just one store? A. Just one store.

Q. As a matter of fact, he wasn't interested in a Sylvania franchise for his Berkeley store in 1963, was he? A. No, sir.

Q. He didn't request it? A. No, sir.

Q. You didn't offer it? A. No.

Q. So you franchised him in Hayward, correct? A. Yes, sir.

Q. And you used the standard written franchise form we see for Continental? A. Yes.

Q. And you made the same verbal representation to him that he needed approval before he could sell from any other store should he so desire in the future? **[285]** A. Yes.

Q. Now, he became a pretty good volume dealer for you in 1963, didn't he? A. Pretty fair.

Q. Do you recall, was he purchasing in carloads or half carloads at a time? A. I believe he had purchased a couple half carloads orders.

Q. He was doing fifty, sixty thousand dollars a year with you? A. Yes.

Q. Selling good color volume? A. Yes.

Q. All right.

Now, in June of 1964 Robert E. Lee made a decision to sell Sylvania merchandise from his Berkeley main store and he moved merchandise to a location without your permission isn't that right? A. Yes.

Q. Now, Berkeley at that time was being covered by Mr. Carroll, isn't that correct? A. I believe so.

Q. It was probably just before Mr. Hallday started with the company. So Mr. Carroll was covering that territory? A. Yes.

[285-A] Q. Mr. Carroll was opposed to the franchise for Mr. Robert E. Lee in Berkeley was he not? A. I believe he was.

[Continued on next page; nothing omitted.]

[286] Q. And his reason, was it not, was that a dealer named Dale Sanford T.V. was his big—Carroll's big—Berkeley dealer? A. Mr. Carroll never gave me his reasons. I don't believe so.

Q. Don't you know of your own knowledge, sir, that the reason for Sylvania's displeasure that having Mr. Robert E. Lee move sets to Berkeley was that he was then in competition with Dale Sanford? A. As far as I know Robert E. Lee only moved some portable black and white merchandise into Berkeley.

As far as I know for rental to the college students.

Q. And competition with Dale Sanford hadn't anything to do with it? A. I am not saying that competition may not have had anything to do with it. I don't know.

Q. You don't know? A. There wasn't enough merchandise there that I know of.

Q. I would like to refer the Court and counsel to page 101 commencing at line 22.

"Mr. Miller: Q. You were at the Robert E. Lee store?

"A. I was at the Robert E. Lee store calling on Sal Talisford who was the manager at that store.

[287] "Q. And that's a large order for you?

"A. Yes. He did a darn good volume. Probably one of our better. He was probably moving as much color as any dealer that I had.

"Q. All right.

"Is that part of your Alameda County District?

"A. Yes.

"Q. And are they still with you?

"A. No, sir.

"Q. When did they terminate?

"A. When did they terminate?

"They terminated in—let's see now—we are in March of 1964—I believe they were terminated in June or July of that year.

"Q. All right.

"For what reason were they terminated?

"A. The basic reason that I couldn't—I didn't feel justified in calling on them and continuing in business.

"Q. Was it because they could not or would not furnish what you felt was a representative display of the products?

"A. No, sir, it was not.

"Q. What was the reason, sir?

"A. The reason was because he was moving [288] merchandise then to his store in Berkeley that was not franchised.

"Q. Was that a Robert E. Lee store in Berkeley?

"A. Yes.

"Q. And Berkeley is not your territory, is it?

"A. It is not my territory and it was not—was not in the best interest of Sylvania at that time to handle Sylvania in that area.

"Q. Was that Mr. Hallday's area?

"A. That was Mr. Hallday's area.

"Q. Why was it not in the best interest of Sylvania to handle products in Berkeley at that time through Robert E. Lee?

"A. Because we had franchised the one store for him. This was the store that he had a franchise in. In moving the franchise into Berkeley, he was in an area that one of our major dealers was in that had made a fair commitment, and with the volume of movements Mr. Hallday had to have, he had to rely on that dealer, and it was not in the best interest of Sylvania or my territory to let him move merchandise out of my territory. I have control of my territory and can franchise a dealer in my territory.

"Q. Well, was the major problem a loss of merchandise from your area or was the major problem of [289] having Robert E. Lee doing business in Berkeley with Sylvania products?

"A. There was no major problem as far as the loss for my territory was concerned.

"Q. What was the name of the other dealer who Mr. Hallday was getting enough volume through in Berkeley?

"A. Dale Sanford."

I would like to refer the Court and counsel to page 105 briefly at line 3.

"Q. Would you say that the reason the franchise in Hayward was terminated for Robert E. Lee was because he was taking Sylvania merchandise and displaying it in Berkeley?"

Skipping to line 10:

"The Witness: Basically this is what it is. I am making a living out of my territory and Jay Hallday is trying to make a living in his territory. It is certainly not in the best interest of Jay Hallday for me to let someone else send merchandise into his territory, and I in turn would be quite upset with Jay Hallday if he set up a couple of three dealers up in my territory and started shipping merchandise in to upset the dealer movement and the dealer sales that I have generated with my dealers. [290] It is respect as far as salesmen are concerned. We have a responsibility in our own district."

Okay. Now, does that help refresh your recollection, Mr. French, that the reason Sylvania, as specifically you and Mr. Carroll, did not want a Robert E. Lee merchandise in Berkeley was because he was in competition in Berkeley with Dale Sanford? A. My reason was the respect for the other salesmen.

Q. You gave these responses I just read under oath. A. That is right and all of them to the respect for the other salesmen.

Q. Is it your testimony now, sir, in Court that the reason that Robert E. Lee was terminated was not because he moved merchandise into Berkeley, but for some other reason? A. The reason that he was terminated as far as I am concerned is because there is a verbal agreement that he is to get a franchise for an area store that he goes into and he had not kept that agreement with me.

Q. All right. So for that reason you terminated him, correct? A. Yes, sir.

Q. Basically what you are telling me, is it not, Mr. French, that if you couldn't control, for example, Robert E. Lee as far as locations, you did not want him as a dealer at all? [291] A. If I don't have the dealers integrity, why, it is pretty hard to do business with him.

Q. And you won't do business with a dealer, will you, sir, unless you can control the location from which—— A. Well—— .

Q. Let me finish.

——you will not do business with a dealer and you would not in 1964 and 1965 unless you as the district sales manager could control the locations from which that dealer displayed and sold Sylvania merchandise, isn't that true? A. If it is a matter of getting agreement with the dealer, sir.

Q. And that was the problem with Robert E. Lee, was it not, in 1964? A. That our relationship had been severed, yes.

Q. The reason was that you couldn't control the location from which he was doing—— A. He had broken the agreement with me.

Q. And that agreement was that he would get your permission before he sold from another location? A. That is right.

Q. Okay.

Now, Mr. French, do you recall that some six days after these telephone conversations with Mr. Steiner that you were again in the Stevens Creek store, Continental Stevens [292] Creek store in San Jose? A. I believe so.

Q. And you had gone there to discuss service problems? A. Yes, sir.

Q. And while you were there you had a conversation with Mr. Shahood, correct? A. Yes.

Q. Mr. Shahood asked you on that occasion to take an order, a stock order for a Sacramento location, did he not? A. I believe so.

Q. What did you tell Mr. Shahood? A. I told him that I had no right to take an order for my location out of my territory.

Q. And that didn't satisfy Mr. Shahood, did it? A. No, sir.

Q. As a matter of fact, Mr. Shahood sat down or had his managers sit down at the typewriter and type up a list of merchandise in lieu of an order form? A. Yes, sir.

Q. Let me show you Exhibit X, Mr. French. Look it over and see if you have seen it before. A. I believe so.

Q. Isn't that the order that Mr. Shahood typed up or had prepared on his typewriter on the Alameda letterhead of [293] Continental T.V.? A. It looks like it.

Q. Dated September 13. You recognize that as Mr. Shahood's signature? A. Yes, sir.

Q. And you wouldn't give Mr. Shahood an order form for this, would you? A. No, sir.

Mr. Miller: We would offer this as our exhibit next in order.

Mr. Popofsky: No objection.

The Court: Admitted.

The Clerk: Claimant's Exhibit X introduced and admitted in evidence.

(Claimant's Exhibit X marked and received in evidence.)

(Continued on next page.)

[294] Mr. Miller: Q. Now, you had occasion while at the Continental store on the 13th of September to place a call to Mr. Lopolito's offices in Los Angeles, do you recall? A. Yes.

Q. And you were talking to the warehouse people down there about some parts? A. Service department, yes, sir.

Q. Mr. Shahood requested that while you were on the line you should try to get ahold of Mr. Lopolito for him? A. Yes, sir.

Q. Did he tell you why he was asking to place a call to Mr. Lopolito? A. I believe he said that he hadn't been able to get through to him, or find him, or something.

Q. He had been trying to contact him for some time and Mr. Lopolito was always out to him? A. I believe so.

Q. That's what he told you anyway, correct? A. He said he couldn't contact him.

Q. And you did in fact get Mr. Lopolito on the phone line, didn't you? A. Yes.

Q. And then you gave the phone to Mr. Shahood and they had some conversation in your presence, at least you heard Mr. Shahood's end of it? [295] A. Yes.

Q. Mr. Shahood asked Mr. Lopolito on that occasion whether there was any credit reason, any credit reason why the Sacramento order, Exhibit X, could not be accepted and approved; isn't that what you heard? A. I believe that he did, yes.

Q. Of course, you didn't hear Mr. Lopolito's response? A. No.

Q. Did Mr. Shahood tell you thereafter what the response had been? A. I think that he said——

* * *

[296] Mr. Miller: Q. What was indicated to you? A. I believe Mr. Shahood told me that Mr. Lopolito had told him that there was—he could see no problem with it. I believe that this was his remarks.

Q. Right. No credit problem. A. I don't know of there being any problem.

Q. And you had not been informed of any credit problem up to this date, the 13th of September? A. No, sir.

Q. So, with some inducement I am sure you were given—you took the order, you took the order from Mr. Shahood, Exhibit X. I mean, you physically took it. A. With some inducement.

Q. You physically took it, correct, sir? A. Yes, sir.

Q. What did you do after that? A. I mailed it into—I called Batavia, I believe.

Q. You called Batavia. Who did you call for? A. Steiner. Steiner wasn't there, so I talked to John Morgan, I guess.

Q. You finally got through to Mr. Morgan, the vice president for sales of Sylvania's sales corporation? A. Right.

Q. Where did you make this call from? Your home? [297] A. No. I stopped at a phone booth on the way home, because it was getting late I believe for Batavia.

Q. It was your concern that Batavia know about it that day? A. Yes, I believe so.

And it was getting late in the afternoon. Batavia would be closed, so I did stop in at the phone booth.

Q. What did you tell Mr. Morgan when you got him? A. That I had in my hand an order, or stocking order for Sacramento.

Q. What was Mr. Morgan's response to that statement? A. Well, mail it to me.

Q. Didn't he first tell you that you should not have taken it? A. Yes.

Q. And didn't he become angry on the phone? A. Yes, I believe so.

Q. And didn't he say in substance, "Why did you take this order?" A. Yeah, why did I take it.

Q. Yes. What did you tell him? A. I told him that it was a matter of taking it or Mr. Shahood was going to send it extra special delivery.

Q. Then at that point, vice president Morgan told you for you to stay away from Continental and to have your [298] calls screened so that you would have no chance to talk to him? A. I believe he did.

Q. That's when it happened? A. Okay. All right.

Q. And Mr. Morgan told you something else, isn't that so, after telling you to stay away and to have your calls screened? A. I don't remember.

Q. Didn't Mr. Morgan on that occasion, sir, the vice president, tell you that if Continental T.V. asks about their previous orders that had not been shipped to date to tell them that they were being held for credit review? A. Yes.

Q. He made that statement? A. Yes.

Q. Mr. Morgan wasn't in the credit office though, was he, of your company? A. I don't believe so. No.

Q. He was vice president in charge of sales, was he not? A. Right. Yes, sir.

Q. Now, after the Morgan conversation on the 13th of [299] September, did you talk to Carroll or Mr. Steiner again about Sacramento? A. I believe so, but I don't know just when. I think Carroll and Steiner were both out of town, or out of their offices. That's the reason why I talked to Mr. Morgan.

Q. Didn't, in fact, Mr. Steiner return your call either the same day or the next day after you talked to Mr. Morgan? A. I can't be sure about that.

Q. I'd like to refer you to page 497 of your deposition, line 1.

"Q. You say it was in this conversation that Morgan may have instructed you about what to tell Shahood if he requested information about his previous order?

"A. Either in this conversation or in the subsequent conversation; that is, the same day or other calls that Mr. Morgan was the only one in. Mr. Carroll or Mr. Steiner were not in, and they called me back on the phone again that afternoon, I believe, or early the next morning."

Mr. Miller: Q. You gave me that response, obviously, in your deposition. Do you recall anything about what you and Mr. Steiner or Mr. Carroll discussed the day, the same day, [300] or the day after? A. I don't.

Q. About a week later Mr. Carroll is back in San Francisco, correct? A. Yes.

Q. And you do meet with him in San Jose, I think it is, and you discuss something about the Sacramento situation, don't you? A. I believe so.

Q. And, in fact, at that time weren't you proposing that somebody like Mr. Steiner or Mr. Morgan, or even Mr. Theis, the president, come out to the coast and sit down with Mr. Shahood? A. I certainly hated to lose my volume.

Q. You were suggesting this to Mr. Carroll, weren't you? A. I believe so.

Q. You were looking for a resolution of this thing? A. Yes.

Q. And what was Mr. Carroll's response? A. I believe that he said at that time that something to the effect that you can't negotiate with someone with a gun at your head, or something like that.

Q. That's correct.

He also told you, did he not, that the Sylvania [301] sets that Continental had in Sacramento were out of trust? Do you recall that? A. I believe so.

Q. Mr. Carroll told you that? A. I believe so.

Q. Right. Now, Mr. Carroll wasn't a credit man, was he? A. No.

Q. He was a salesman? A. Right.

Q. And what did you understand the term "out of trust" to mean? A. You are asking for my understanding about a trust?

Q. Yes. In the sales department—now, Mr. Carroll used this term to you. A. In merchandise that is on floor, trust set with a dealer that has moved from the location that it is supposed to be in and supposed to be paid before it is taken from the location.

Q. So you understood this to be some kind of a violation of the financing terms with Maguire? A. I assume it to be.

Q. That's the way you understood it? [302] A. That's the way I assumed it to be.

Q. That's the way you understood Mr. Carroll used it? A. Yes.

Q. Now, as a matter of fact, you even told George Shahood the same thing, that these sets were out of trust in Sacramento, didn't you? A. As far as my

own personal opinion, I have no—I am not a financing man.

Q. I appreciate that. Do you recall making a statement to Mr. Shahood? A. I believe that I did.

Q. Now, as part of your duties, sir, you fill out certain reports, and one of those reports is a daily call report? A. Yes.

Q. Do you still do that? A. No, sir.

Q. But in 1965, that was one of the requirements of your job, correct? A. Yes, sir.

Q. And the day that you talked to John Morgan, the vice president, and he told you that, "Tell them there is a credit review if they ask," and the day you were at Continental and they gave you this exhibit X order for [303] Sacramento, you prepared a call report of your activity for the day, did you not? A. Uh huh.

Q. Is that your signature on that document? A. Yes, sir.

Q. And what is the date? A. September 13.

Q. Do you show a call to Continental T.V.? A. Yes, sir.

Q. Does it show how many hours you spent there? A. Yes.

Q. How many? A. About three hours.

Q. Does it show the person you contacted? A. George Shahood; yes, sir.

Q. And then there is a section for comments, isn't there? A. Yes, sir.

Q. And under the comment or the remarks section at one place it says: "Still can't get merchandise out of Sacramento, but I feel it will be done shortly."

Now, you printed that in the comments section, did you, sir? A. Yes, sir.

Q. And that was the same day you talked to John [304] Morgan on the phone? A. I believe so.

Mr. Miller: I would offer this as Claimant's next as offered.

Mr. Popofsky: No objection.

The Court: May be admitted.

The Clerk: Exhibit W introduced and admitted into evidence.

(Claimant's Exhibit W marked and received into evidence.)

* * *

[310] * * * Q. Now, you attended a meeting the evening of October 13, did you not? A. Yes.

Q. Where was that meeting held? A. At the Burlingame Hyatt House, I believe.

Q. Who was in attendance from your company? A. Mr. Carroll, Mr. Lockhart, Mr. Lopolito, myself, [311] I believe.

Q. How about Mr. Rivers? A. Mr. Rivers, I believe he was there, yes.

Q. Mr. Rivers was then the national credit manager? A. I believe so. I don't know exactly what Tom's title was.

Q. Who was present, to your recollection, from Maguire Company? A. Mr. *Pedlow* and Mr. Petrick. I believe those were the only ones.

Q. Now, Mr. Lockhart, the controller of Sylvania, J. Lee Lockhart, made some introductory statements at this meeting, did he not? A. I believe he did, yes, sir.

Q. Did he not say that, to those assembled, that they should remember this is a Maguire action and not a Sylvania action? A. I'm not sure of his exact words, something to that effect.

Q. Well, he did that—— A. Sylvania, that Sylvania, that they were—they were there to identify Sylvania merchandise, that—I'm not sure of his exact words.

Q. All right, sir, but in substance he did tell those assembled that the merchandise was picked up because of lack **[312]** of payment, didn't he? A. I believe that was what he said.

Q. Then Mr. Pedlow took over the meeting, didn't he? A. I believe so.

Q. Mr. Pedlow was a vice-president in charge of flooring for Maguire Company, was he not, at that time? A. I don't know what his title was.

Q. But he worked for Maguire? A. Yes, my understanding.

Q. Okay. And he more or less reviewed the day's activities as an introduction, didn't he? A. I believe so.

Q. Okay. And didn't he cover the fact that the Federal Marshals were instructed that they were to treat Continental T.V. during this repossession as an ex-con operation? A. I believe that it was referred to as Mr. Shahood was referred to as an ex-con.

Q. And he was to be treated as such? A. To watch out for him or treat him under those conditions, or something such as that.

Q. You understood this to be on the instructions that were given by Sylvania and Maguire to the

Federal Marshals? A. By Mr. Pedlow, as far as I know.

[313] Q. Yes, to the Federal Marshals? A. That's as I understood, yes.

Q. And then didn't Mr. Pedlow cover the fact that the Federal Marshals patrolled all the store locations so that the repossession did proceed simultaneously from all stores? A. I believe so, yes.

Q. Did he mention why this was done? A. I don't know that he gave a reason for it.

Q. Mr. Pedlow also reviewed the fact that the main Continental T.V. bank accounts were simultaneously attached? A. He may have. There was some reference to the bank.

Q. All right.

And then as I understand it each of the various men at the meeting reviewed for Mr. Pedlow and Mr. Lockhart what occurred at their various locations as they helped with the repossession, correct? A. Yes.

Q. And generally speaking what did these people say about the cooperation or lack of cooperation of Continental people? A. They seemed to have pretty fair cooperation in locating the merchandise.

Q. Did Mr. Pedlow, the Maguire man, agree? **[314]** A. No, he said he had a little difficulty at the Santa Clara Store.

Q. And in substance didn't Mr. Pedlow say that some day somebody is going to get that little Dago down at the Continental main store? A. In substance I believe there was something mentioned about that.

Q. Did he use that term? A. He was being obstructed a little bit, I believe.

Q. Did he refer to the store manager at Stevens Creek in that phrase? A. I believe that that was the reference.

Q. That was Mr. Tony *Greco?* A. Yes.

Q. Of course, you had known Mr. Greco a couple of years by that time? A. Yes.

Q. Did you find him to be a cooperative person? A. He had always been with me.

Q. Now, they also discussed at this meeting, did they not, that Mr. Lockhart, the controller from Sylvania, was floundering around on Mr. Shahood's false ceiling over his office? A. Yes.

Q. And came crashing through it? **[315]** A. Yes.

Q. The chaining and the locking of the San Jose store, or the San Jose warehouse and the downtown San Jose store, that is, the Stevens Creek store, the downtown San Jose store and the San Jose warehouse, was that discussed? A. Yes, I believe they discussed that.

Q. Why was it necessary to chain and lock those stores and warehouses, any reason given? A. I don't know.

Q. Now, Mr. Pedlow at that time, Maguire Company's Mr. Pedlow, in fact told the people assembled at this meeting that Continental had lost its bank connections, isn't that true? A. I don't know that he said that they had lost them, he may have. There was a reference to the banking connections; I am not sure what it was.

Q. There was a reference made to Continental's banking connections, was there not? A. Yes, both retail and banking connections.

Q. And Mr. Pedlow in substance said that Continental's banking connections had probably been jeopardized, isn't that the substance of what he said? A. Something to that effect.

Q. To the group of people? A. Yes, I believe so.

[316] Q. And further that Continental's retail sales of contract paper, that is, the consumer paper that they sold to banks, that that part of their business had possibly been jeopardized? A. I believe that he made reference to that, yes.

Q. And he said that if that were the case Continental would suffer sales losses; he told the people that, didn't he? A. I think that he did. There was general conversation on that.

Q. In fact, didn't Mr. Pedlow tell the people there at that meeting that this discounting of consumer contract paper was the backbone of Continental's business? A. I believe that that was referred to, yes.

Q. And if it was lost Continental was going to suffer? A. I believe so.

Q. Now, Mr. Lockhart, the controller, Sylvania controller, had a conversation with Mr. Rivers, the Sylvania credit manager, in front of the rest of the people at this meeting concerning a man by the name of Bob Marks. Do you recall that? A. Yes, it was Mr. Rivers.

Q. Yes. A. Okay.

Q. And Mr. Lockhart in fact asked Mr. Rivers to call [317] Mr. Marks, did he not? A. Was it Mr. Rivers or Mr. Lopolito?

Q. Well—— A. I'm not sure.

Q. All right. A. I would like to clarify it.

Q. At Page 513, Line 24:

"Q. Now, at this meeting didn't Mr. Lockhart ask Tom Rivers if he was acquainted with the so-called manager by the name of Bob Mark?

"A. Right."

The Witness: Okay.

Mr. Miller: Going to Page 514:

"Q. What did Mr. Rivers say?

"A. He said yes, that he knew Mr. Mark.

"Q. Didn't he tell Mr. Lockhart he was a personal friend and had known Mr. Mark for a number of years?

"A. Yes, he said that he was a personal friend of his and that he had known him for some time."

Q. Now, that refreshes you? A. Yes. Thank you.

Q. Now, as a matter of fact, Bob Mark was the credit manager for Philco, wasn't he? A. I believe he was. I'm not acquainted with Mr. Mark.

Q. All right, sir. And Lockhart, the Sylvania [318] controller, asked Rivers, the Sylvania credit manager, to call Mr. Mark immediately to tell him what Sylvania-Maguire had done with the Continental, isn't that right? A. I don't know whether he said immediately. I think he did ask him if he would call him that evening.

Q. Didn't he ask Mr. Rivers to call that evening? A. Yes, I think that he did, yes.

Q. Mr. Rivers responded, did he not, that he was a personal friend of Bob Mark, the Philco man, and that he knew that Bob Mark had a sick child and he didn't wish to bother him that night? A. Yes.

Q. And further didn't Mr. Lockhart respond, "Well, if that's the case, be sure and call him the first thing in the morning?" A. I believe so.

Q. And further didn't Lockhart tell Rivers to call him in the morning before he goes to work? A. I believe he suggested that.

Q. Right. So apparently Mr. Lockhart, at least, indicated some urgency; is that your understanding? A. I believe so, yes.

Q. And Lockhart specifically told Rivers for Rivers to inform Bob Mark of Philco as to the actions taken that day? [319] A. Yes.

Q. Now, Mr. French, after the repossession had been completed, do you know where the merchandise was stored? A. I learned later, yes.

Q. How about the merchandise repossessed from the Sacramento store, was that stored in Sacramento? A. Yes.

Q. And how about the merchandise from the Geary Street store in San Francisco, was that stored in San Francisco? A. I believe so.

Q. Would the same be true for Salinas? A. Yes.

Q. And San Jose? A. Yes.

Q. Now, is it not a fact that Sylvania purchased back from Maguire all of the merchandise repossessed

from Continental T.V.? A. I would believe so. I don't know.

Q. Well, as a matter of fact, you resold that merchandise yourself? A. I resold it, but——

Q. All right. And who did you sell it to? A. *Alko-Paramount.*

Q. Alko-Paramount in San Jose? **[320]** A. Yes, sir.

Q. And that was accomplished late October, early November sometime? A. Somewhere in there.

Q. Okay. Of course, by that time wasn't it called Alko-Nelson, was there an Alko-Nelson also franchised? A. It was a partnership that was formed with two Nelson stores and one Alko-Paramount store and for delivery clarification they called the two Nelson stores Alko-Nelson, just for significance for a few months.

Q. So by the time you resold the merchandise repossessed from Continental T.V. Alko-Paramount, the dealer you had franchised in August, had become a chain around San Jose, had three or four stores? A. They had three stores when I franchised them.

Q. Okay. And they were a competitor of Continental in San Jose? A. They could be called a competitor, they are in the same town.

Q. Excuse me, Santa Clara was where Continental was. San Jose they had one store. They could be a competitor, yes.

Q. Santa Clara County. A. Santa Clara County.

Q. Now, did Sylvania pay the freight or the shipment **[321]** of all this merchandise to Alko-Nelson and Alko-Paramount? A. No.

Q. They did not? A. Not all of it.

Q. Well, they paid the freight for the shipment of sets from San Francisco to San Jose, didn't they? A. Yes.

Q. From Salinas? A. Yes.

Q. And whenever was necessary for freight from San Jose to Alko-Paramount stores, San Jose warehouse? A. Yes.

Q. It was only in Sacramento that Alko-Nelson was asked to pay the freight? A. Yes.

Q. Something approaching $80,000 worth of merchandise? A. I believe so.

Q. Now, there was some color merchandise in that repossessed lot of merchandise, weren't there? A. I'm sure there was.

Q. Was any of that colored charged against Alko-Paramount or Alko-Nelson's allocations? A. I don't believe so.

Q. So that Alko-Paramount got whatever their allocation **[322]** turned out to be plus they received the color sets in the repossessed merchandise, right? A. Yes.

Q. Do you have any recollection as to how much business Alko-Paramount did with your company in 1966? A. I would only be making a guess at this point.

Q. I don't want you to do that.

Isn't it a fact, sir, that Alko-Paramount took every color set made available to it from the fall of 1965 through most of 1966? A. I don't believe so.

Q. Did not Alko-Paramount at times demand more color sets than they were allocated? A. Through

the fall of '65 and maybe the first couple months of '66.

Q. Of course, many dealers were doing that at that time? A. Yes, that was the big color demand.

Q. Now, the fact that Continental had spent over a period of two years substantial monies advertising and promoting the Sylvania name in not only San Jose, Salinas, San Francisco, Oakland, didn't that inure to the benefit of Alko-Nelson in San Jose and the dealer you put on in Salinas after Continental was terminated? A. It may have.

[323] Q. You did put a dealer in Salinas on after Continental's termination, didn't you? A. Yes, sir.

Q. Packwood's? A. Yes.

Q. Really a replacement for Continental? A. It was another dealer.

Q. Well, you didn't put them on until Continental was terminated, did you? A. No.

Q. How did you do on your quota, Mr. French, in 1965? Did you make your quota? A. I believe I did.

Q. As a matter of fact—— A. Pretty close to it.

Q. When you say "made your quota" you are talking about 120 percent of the established quota, right? A. Yes.

Q. So you made at least 120 percent of your quota, right? A. Well, I am not sure of the figure, but I made my quota, I believe.

Q. That was 1.2 million that year? A. Somewhere in that area.

Q. Now, even though Continental was terminated in [324] October and received very little shipment after March and April, how much would you say of your total territory purchases did Continental account for in 1965? A. Gee, I don't know. Forty percent, maybe, somewhere in there.

Q. Wasn't it closer to 60 percent of your total territorial purchases? A. In '65?

Q. Yes, sir. A. I don't know.

Q. I refer to Page 88, Line 9:

"Q. What percent of these purchases were for colored products in 1965?

"A. I would say the overall picture was, would be around 60 to 70 percent.

"Q. And what percent of your total purchases were attributable to purchases by Continental Television in 1965"——

Skipping to Line 17.

"Q. Now, I am asking for 1965.

"A. Somewhere between 50 and 60, around 50 percent."

So with that refreshment of your recollection is it fair to say that Continental, even though it didn't receive many shipments after March of 1965, still attributed about 50 percent of your total territory purchases that year?

[325] A. Evidently they did.

Q. Now, I think on Friday you mentioned that the shortage period as far as you can remember was over sometime in the summer of 1966, Mr. French. Is it not a fact, however, that Sylvania continued to al-

locate color television sets to its dealers through November of 1966? A. I'm not sure.

Q. Could be? A. It could be, but many of the dealers were not taking their full allocation, starting, I believe, in March or April of that year.

Q. Well, starting with the allocation made for the first allocation period which was September and October of 1965? A. Yes.

Q. Is that true? A. Yes.

Q. Starting with the first allocation period it is a fact that the allocations made by Sylvania for their approved dealers increased right on through 1965 and through 1966 each allocation period, didn't they? A. Yes, I believe they did.

Q. And even though you mentioned that some dealers didn't use all their allocations, certainly it is a fact that many dealers needed more color than they were able to **[326]** get, particularly, in '65 and the first part of '66? A. Right.

Q. Now, is it not a fact, Mr. French, that Continental T.V. was allocated a certain number of sets for the first two allocation periods, September through December of 1965? A. I don't believe I ever got an allocation on Continental T.V.

Q. You had no information about Continental's allocation? A. No, I don't believe I was given a formal allocation.

Q. When did you receive formal allocations for the other dealers in your area? A. I believe it was in September.

Q. Late in September? A. I'm not sure just when it was.

Q. Now, Mr. French, at any time in 1965 were you ever aware of a complaint by Maguire that Continental was not computing its maturity items correctly? A. I don't understand what you are talking about.

Q. Okay. You do know that under the Maguire financing plan that after a dealer has a financed item on its floor for over six months the purchase price is due Maguire for that item, correct? **[327]** A. Yes, I believe that's the term in there——

Q. That term refers to such an item, matured item? A. Matured item, yes.

Q. Correct. My question simply meant to ask you whether at any time during 1965 you heard any complaints from anybody in Maguire that Continental wasn't computing their maturities correctly? A. I didn't hear any complaints about it.

Q. Did you hear any such complaints from anybody in your company? A. No.

* * *

[352] * * * Q. With respect, sir, to Continental Television and its related corporations, do you know what kind of sales technique they generally employed? If that's understandable to you. A. Yes, I believe I understand the question. Their sales were made probably 90 percent in the home on telephone leads.

Q. In the home on telephone leads? A. Yes.

Q. Is that the so-called home demonstration type of method of selling? A. Yes.

Q. Did Continental T.V.'s ad feature free-home demonstrations, that sort of thing? A. Yes.

Q. You mentioned the term advertising. Does that mean they would advertise $3 or $4 per month or per week? A. Yes.

Q. Rather than the total list price of the T.V. set? A. Yes.

[353] Q. Did Sylvania, to your knowledge, or you, to your knowledge, ever complain about this method of pricing? A. Well, we like to build a better image market wise than that.

Q. But aside from likes, performances, did you ever make any formal complaint to Mr. Shahood? A. Yes, I expressed my dislike for it.

Q. Did he go right ahead and continue to use his old policy? A. Yes.

We discussed that to some length at various times as to the need for such elaborate stores and elaborate displays, and the best stores in this whole area, but yet selling 80 to 90 percent of his sales in the home. There was very few customers that came in the stores to buy, at least during my relationship with him.

But again, Mr. Shahood was building a business, and he so informed me that this was one of the things that would be necessary for him to get the volume that was necessary to support these stores; that eventually he hoped that the stores could stand on their own and maybe wouldn't—he wouldn't go into so much of this type of advertising.

Q. Well, with this type of advertising feature, sir, do you know what retail prices he was charging? A. It varied, I believe. It wasn't—it was higher **[354]**

than our suggested retail price, especially in home demonstrations where he needed additional profits to pay the salesman contacting in the homes.

Q. Did you, sir, or to your knowledge anybody at Sylvania ever say to George Shahood that he had to bring his prices into line with Sylvania's suggestions? A. No. As a matter of suggestion I felt he might do a better job if he did.

Q. Did you ever made any threat to cut off Mr. Shahood or Continental T.V. by reason of the prices he charged? A. No, sir.

Q. Was price ever discussed at any time in any of the conversations you had and to which you have testified in connection with Sacramento? A. No, sir.

Q. Or Vallejo? A. No.

* * *

[375] * * * Q. Now, sir, you have testified in considerable detail concerning the sequence of telephone conversations which you had concerning Sacramento during late August and early September, 1965. And if I may, you described telephone conversations with Mr. Hines, Mr Steiner, Mr. Morgan.

One question counsel did not ask you is during your September 7 phone calls with Mr. Steiner did you discuss or did Mr. Steiner discuss a credit hold?

A. I believe he informed me at that time that there was a credit hold, that if Mr. Shahood asked concerning the orders that I was to advise him that there would be a hold **[376]** for a credit review. I believe that's the sequence.

Q. And that was a day or two after Mr. Shahood had told you he was moving merchandise into Sacramento? A. Yes.

* * *

[388] * * * Q. In addition to that, Mr. Shahood on behalf of Continental in Sacramento gave you an order on the 13th of September which he wanted you to place? A. Yes, sir.

Q. And that order was for about $80,000 of merchandise is that correct? A. Yes, sir.

Q. So if those orders had been shipped, all three, Mr. Shahood would have received about $255,000 in merchandise from July through October, right? If they had been processed and accepted? A. Yes, sir.

Q. And yet in Chicago he gave you an order for $220,000, and then withdrew it, as you say? A. Yes.

Q. Is it still your testimony that you thought that Continental T.V. was cutting down on its purchases of Sylvania products in the fall? A. Strictly a matter of personal opinion.

I am still writing orders. I have nothing to do with the credit. I am going to write orders just as long as I can get them.

* * *

Testimony of John T. Morgan

[395] * * * The Court: The usual procedure, ladies and gentlemen of the jury, is that where a person is not available and you have a deposition, that counsel read the question and that another lawyer take the witness stand and he reads the answer.

That's just in an effort to try to simulate the procedure in the event the witness was here.

The statements in these depositions were taken under oath, and they have the same weight that you would give the testimony of witnesses here personally.

You may proceed, counsel.

Mr. Miller: Thank you, Your Honor.

Commencing at page 4.

"Q. What is your full name, please?

"A. John Thomas Morgan.

"Q. Where do you reside, Mr. Morgan?

"A. 49 East Main Street, LeRoy, New York.

"Q. What is your official title with Sylvania at this time?

[396] "A. President of Sylvania Entertainment Products Corporation."

Mr. Miller: Page 5.

"Q. How long have you been employed at Sylvania, Mr. Morgan?

"A. Since 1962.

* * *

[400] * * * "Q. Do you know how Sylvania ranked in terms of total sales of television manufacturers in 1962?

"A. Certainly not very high. I think it would be right down at the bottom of the list.

"Q. Now in 1962, it is my understanding that Sylvania did not have a direct dealer program; it was a distributorship program, was it not?

"A. Right. It was distributors and branches. They had a direct dealer program, had gotten

onto one, off of one, onto one, this sort of thing. Again, 1962 they had nothing."

* * *

[402] * * * "Q. So you met Mr. Anderson in Fresno?

"A. Yes.

"Q. What did you discuss with Mr. Anderson at that point?

"A. I told him I thought Sylvania was a wonderful line for him and he should take it on.

"Q. Did you tell him he should drop the Philco line?

"A. Certainly not.

"Q. What did Mr. Anderson say to you?

"A. I had to sell him. I told him what we were **[403]** going to do, that this was an example of what we could do on products. We had advanced the line terrifically by June of '63, put through a lot of crash programs and brought out a line in '63 that just about turned this whole Sylvania product line around.

"Q. Were you successful in selling Mr. Anderson at this meeting in Fresno?

"A. Yes. I was successful to the point that they took me out to the plane and shook hands and he says, 'Okay, I will give your line a try.'

"Q. Did he place an order with you personally?

"A. No. I didn't take the order. No. I told him I would have the man call on him, and he did, and he got the order.

"Q. So the order would have to go through Harry Marco's office?

"A. No, it went through, at the time—no. We had Jimmy Hines in the territory.

"Q. So you had a direct dealer set up in Sacramento then, a direct dealer line?

"A. Yes.

"Q. And Mr. Hines, who is still over there, was the salesman?

"A. Right.

[404] "Q. Mr. Anderson didn't mention to you at that time that he owned any part of the Fresno distributorship?

"A. No.

"Q. Now, do you recall when the Fresno distributorship started purchasing Sylvania products?

"A. I think it was right at that time. They had a distributor here, and at that time I was Merchandise Manager. We had a vice president of sales, a guy by the name of Ken Connor. We had a distributor in the Fresno market and he was not doing anything. And I don't know who came up with H and A Distributing, but we were looking for a new distributorship here—

"Q. I see. So the distributorship that was there was not H and A?

"A. It was terminated, cancelled, and H and A was put on. So I met Jack Hastings for the first time as a brand-new distributor, and I came out and gave a talk to his dealer organization."

Mr. Miller: Page 34.

"Q. Did you meet Mr. Hastings at the same time you met Mr. Anderson in Fresno?

"A. Yes. Keith came down to the open house."

Mr. Miller: Page 35.

[405] "Q. Let's take it in this context: At some point in time it was decided that the San Francisco Bay Area should be a direct line area, direct dealer area?

"A. This was decided from the very first day that we put in the program, that we would close down all branches, and we did close down the branch."

Mr. Miller: Page 36.

"Q. Now when you came with Sylvania in 1962, '63, how many distributorships for Sylvania products were in California, if you recall?

"A. Were in California?

"Q. Yes.

"A. L.A. and Fresno.

"Q. Counting branches or private distributors?

"A. We had a branch in San Francisco. We had a distributor, an independent distributor, in Los Angeles, and we had an independent distributor in Fresno."

* * *

[411] * * * "Q. In 1965, Mr. Morgan, can you tell me approximately the dollar figure of brown goods sales for Sylvania?

"Mr. Popofsky: Total sales, is this, counsel?

"Mr. White: Yes, this includes all brown goods."

Line 24:

"Mr. White: Q. If you know offhand the approximate dollar volume for 1965?

"A. 1965, around 75 million.

"Q. 1966?

"A. Like 120 million."

Page 67, Line 12:

"Q. All right. Now are you familiar with the term "elbow room policy"?

"A. Yes.

"Q. This is a sales policy, is it not, a franchising policy for dealers?

"A. It's a term to describe fewer dealers in competition.

"Q. In 1962, when you came with Sylvania was there an elbow room policy of any type?

"A. No.

"Q. Whose idea was this?

"A. The term 'elbow room'?

[412] "Q. The policy itself.

"A. The franchise?

"Q. Yes.

"A. It was an agreement that Mr. Theis and I have this is the kind of program we were going to have, basically there was—I didn't feel, neither did Bob, that there was any other type of program that you could have."

Page 74, Line 6:

"Q. Since 1963 Mr. Hines has been the only district sales manager in the Sacramento area, right?

"A. Yes."

* * *

[418] "Q. Was this the policy of the operation in 1964 and '65, too?

"A. Yes."

* * *

"Q. Alco-Paramount presently has two or more stores in Mr. French's territory?

"A. Yes.

"Q. If Alco-Paramount wishes to open a store in San Francisco, does this have to be approved by Jay Hallday?

"A. Yes.

"Q. If Mr. Halliday disapproves the opening of this store, does that end the matter?

"A. Yes, we couldn't give them a franchise for that store. It would have also the approval, let's say by Don Carroll.

"Q. Now, if Mr. Halliday disapproves the store, but Mr. Carroll wants the branch store, I assume Mr. Carroll's decision would prevail?

"A. Right.

"Q. Now is there anything in writing that you know of that is given to a franchised dealer that limits the area where he can open a store?

"A. No, sir.

"Q. So the first knowledge a dealer would have is [419] when he goes to move into the other territory?

"A. No. There is—our dealers know we have a franchise and a franchise strictly means that—it works both ways. As a franchise he has it for those existing locations. Now he knows when he opens another store that he is going to ask us for a franchise and he can get a no.

"Q. How does he know this? How is the dealer advised he has to get another franchise to operate another store?

"A. I think every dealer knows our program. I mean that's the whole object of the franchise.

"Q. I am asking you, Mr. Morgan, is there anything in writing—

"A. No.

"Q. Or verbally in your program that explains to a dealer that says he has to be franchised for a new store?

"Mr. Popofsky: This is in writing or verbal?

"Mr. White: Right.

"The Witness: Not in writing but certainly verbal. I have said it from the stage. I have said it to the National Association of Radio Dealers of America.

"Q. Now what person or persons in your organization [420] are supposed to advise the dealer of this? The salesmen?

"A. Yes.

"Q. This is part of their program that they are supposed to outline to the dealer when they take them on?

"A. Right.

"Q. He has to be franchised in every location, right?

"A. Right."

* * *

"Q. Does each store location for a chain dealer have to be covered by a separate franchise agreement?

"A. No.

"Q. How is this noted in your franchise arrangement that it's a new location?

"A. We put it on our account sheets back at the factory."

* * *

"Q. Since you became president of Sylvania Home Entertainment, can you think of any dealer who has been denied the right to open a branch store anywhere in the United States?

"A. Yes.

"Q. Can you think of a specific one?

[421] "A. J. M. Fields.

"Q. Where is that?

"A. We sold J. M. Fields stores all the way from Miami up through New England. We don't sell all their stores.

"Q. What determines which stores you sell to?

"A. Whether we have enough coverage in that area.

"Q. Is there any policy that prohibits one Fields store from moving merchandise to another one and selling out of that store?

"A. Certainly. They would be selling without a franchise."

* * *

"Q. Let's take it more specifically. Is there anything in writing signed by the dealer that determines from what locations he can sell merchandise, that limits the number of stores that he can have anywhere?

"A. There is nothing that limits the number of stores that he can have, and he can have them anywhere at all, and if a dealer is going to open up a store or he is going to have—go into another market, he can go anywhere and open up another store. He comes to us and he says, "Can I have a franchise for that store?" And we say yes or no, depending on [422] whether or not we have coverage there or not. If we have been doing business with a dealer since 1962, or the guy we started with, we are not going to—just because this guy opens a store there, we are not going to put them side by side because he has a franchise in his other stores. We will not franchise a chain, per se.

"This program—I might add that this program from Day 1 to now, gets a little bit more complicated every year because in the beginning there was probably no problem: We never had any dealers.

"Q. I would assume the more dealers you get, the more this problem comes up?

"A. That's right."

* * *

"Q. I take it from your testimony that a dealer, Sylvania dealer, cannot display and sell merchandise from a location without being approved as a franchised dealer for that location?

"A. Right."

* * *

"Q. When you have a chain store operation—take Alco-Paramount again. He has a franchise store or stores, in Santa Clara County. Suppose they open a store in San Francisco, can they display [**423**] merchandise in San Francisco before that store is franchised by Batavia or approved by Batavia for franchise?

"A. No."

* * *

"Q. Based upon that testimony, it is my understanding that there is a policy against shipping merchandise from one franchised location to one that is not franchised and offering it for sale at the non-franchised location?

"A. Right.

"Q. Even though it is owned by the same people?

"A. Right."

* * *

"Q. Is there any policy of Sylvania one way or another about giving a dealer an exclusive territory to sell in?

"A. There is very definitely a policy.

"Q. What is this policy?

"A. We give nobody exclusive nothing.

"Q. This has been true since the inception, I take it?

"A. Right."

* * *

"Q. Have you franchised any dealers of any significance [**424**] in Sacramento since you became president of the division?

"A. No."

* * *

"Q. Are any efforts being made to put on new Sylvania dealers in the Sacramento area?

"A. Yes, the dealers we want.

"Q. What would determine which dealers you want and which you don't want in an area like Sacramento?

"A. Breuner's and Macy's.

"Q. What is the reason for this?

"A. I think marketing-wise, strategy-wise, I think that's the two accounts we need in there.

"Q. That is the type of need that you are talking about that you have to fill somewhere?

"A. Right.

"Q. Is this based upon your personal inspection of the area or reports or Mr. Hines' opinion, and Mr. Carroll, for that matter?

"A. It's a combination of all of them and my own personal—I will say my own personal strategy on this, yes. Not only this market, but any market.

"Q. Well, I take it in San Francisco you are not looking just for Breuner's or Macy's to sell?

"A. That's right.

"Q. You may take a pure television dealer, a music [**424-A**] store, or whatever, in San Francisco?

"A. Right.

"Q. Sacramento you have narrowed it down to furniture in Breuner's case or department stores, in Macy's?

"A. Right."

[Continued on next page; nothing omitted.]

[**425**] * * * "Q. As I understand it, Mr. Morgan, the next largest Sylvania dealer in Sacramento at the present time is considerably smaller in terms of dollar volume than Mr. Anderson; isn't that true?

"A. I am sure it is.

"Q. Is there any reason why Sacramento couldn't maintain another Keith Anderson operation in Sylvania products?

"A. It certainly could. I don't think there is another Keith Anderson, or any other type of operation like him in Sacramento. We have a formidible competitor in Sacramento by the name of White Front, who we do not sell and who we do not want to sell. Every market is different. There just isn't any dealer there that we know of. In fact, my own experience with the Sacramento market before in Philco, before we had

Keith Anderson, we never got beans out of it. You have Breuner's now. Macy's have a store up there. And you have Keith. And then you have your White Front. Aside from that, you have a couple of closed doors, is all I know of the place."

[**429**] * * * "Q. Now Mr. Anderson also advised you that Shahood had Sylvania merchandise in Sacramento, didn't he? He called you up on the phone?

"A. Yes.

"Q. Now, was it after Mr. Steiner had told you [**430**] merchandise was in Sacramento, or did Mr. Anderson give you the news first?

"A. No, he did not give me the news first. So it had to be after I knew about it.

"Q. Now what did Mr. Anderson say to you when he called?

"A. He didn't call me on that. He mentioned it and I says, 'Keith, I don't want to talk about it.'

"Q. Well, did you tell Mr. Anderson that Mr. Shahood wasn't franchised for Sacramento?

"A. No.

"Q. Did Mr. Anderson ask whether a franchise had been given for Sacramento?

"A. No.

"Q. Did he threaten to cancel his June order?

"A. No."

* * *

"Q. That was all that was said, Continental is here and they got merchandise, something to that effect?

"A. Right. Right. And we talked about some models and some styling, and he mentioned it, and I says, 'Keith, I don't want to talk about it.' I didn't talk about it.

"Q. Did Mr. Anderson tell you where Mr. Shahood's [431] store was in proximity to his?

"A. No.

"Q. You didn't know whether it was all the way across town or not?

"A. I had no idea where it was.

"Q. It didn't concern you?

"A. No.

"Q. Now did you have any other conversations with Mr. Anderson except the one in which Continental T.V. was mentioned? I mean in the context of time September, October?

"A. No."

* * *

"Q. All right. Now during the conversation with Anderson on the phone, did he make any complaint at all about Continental being at Sacramento?

"A. No, other than telli[illegible] me that he is selling merchandise down there, and that's it.

"Q. He wasn't happy about it, was he?

"A. No, he wasn't happy about it, but he didn't threaten me or anything else. He just told me Continental opened up down there."

* * *

[437] * * * "Q. Now I take it when you talked to Mr. Anderson, there was no reason to discuss

anything with him concerning a franchise, because you already had decided that Continental wouldn't be franchised in Sacramento. Is that fair to say?

"A. I hadn't made the decision whether he wouldn't or would have been. The question is that he just decided that he was going to do it. It's a matter of principle more than anything else. At the time, [438] the first thing, I was going to win the principle argument. No dealer is going to open up a store and say 'You are going to franchise me.'"

* * *

[439] * * * "Q. All right. Now you are familiar with the term 'elbow room policy'?

"A. Yes.

"Q. This is a sales policy, is it not, a franchising policy for dealers?

"A. It's a term to describe fewer dealers in competition.

"Q. In 1962 when you came with Sylvania was there an elbow room policy of any type?

"A. No.

"Q. Whose idea was this?

[440] "A. The term 'elbow room'?

"Q. The policy itself.

"A. The franchise?

"Q. Yes.

"A. It was an agrement that Mr. Theis and I have, this is the kind of program we were going to have, basically there was—I didn't feel,

neither did Bob, that there was any other type of program that you could have."

* * *

"Q. So from what source did the two of you develop this policy, if any source at all?

"A. Well, I think it evolved around one, determining first of all whether or not you should be in business, and what purpose do you serve or what can you serve and just what is your policy going to be and can you fulfill a need. If you can't, get the hell out of business. So we felt that we could fulfill a need and the need was to provide a line of merchandise to dealers that they would be proud to sell and we would be proud to sell and everybody could make a living at it, make the kind of profit they could make on it."

* * *

[441] * * * "Q. Now in 1962 as finally developed by Mr. Theis and yourself, what made up the elbow room policy? What factors, what determinations, and so forth?

"A. Well, first of all you would have to go back to 1962 whereby we had the distributor and branch organization and it took us through 1962 to close down the branches. I think we had some —Well, we had a branch in Chicago. The New York branch was already closed down. We had a branch out here in San Francisco. There was a question of closing down these branches. We had many open territories where we did not have

any distributors. And it meant closing out these weaker distributors and going direct in these markets which meant hiring men. And we started out, I guess, in 1962—I don't really know—I would say maybe twenty men.

"Q. All right. Once the elbow room policy or the direct dealer program was set up, what factors or guidelines were given to the district sales managers to implement this policy, this franchising policy? How were they to decide whether they should franchise one dealer or another?

"What were the factors in 1962?

[442] "A. The policy is simply a franchise —that is, here is a man in the territory and the whole thing is built on the premise that within— Let's talk about a one percent territory. You can get it down to a man's territory. Within this territory, a one percent territory, there are anywhere from 300 to 500 dealers, and, oh, by the trade papers, number of outlets as high as 750 outlets within a one percent theoretical territory.

"Now if we are going to put one man in there, obviously he physically can only call on X number of people and he obviously has to get the size of an account that can support his call. It is strictly an economical factor. He is competing with a distributor in that market. The distributor in that market is selling 250 of those 300 dealers, and he is trying to sell the other 50 and it is just a question of going up and down the street and selling anybody that wants to buy your line.

"So our man— We said, one, he has got to go in there and he has to perform all the functions of the distributor with the exception of the warehousing and the shipping, which we do, and that he can only call on so many dealers and to pick the finest dealers, compatible dealers, so that they [**443**] will tie in with our minds of merchandising and that we can fulfill the need, a need for profit in this industry, and this is what we do.

"Q. Taking those dealers, the physical proximity of stores enter into it, how close one dealer is to another?

"A. Not necessarily. I think it's all a very subjective thing. For example, compatibility enters into it. Let's say a furniture store is not selling the same type of customer as the TV specialty appliance store. The music store is not selling the same customer. The department store generally has their own people.

"Q. By compatibility, you mean what type of customers the store is dealing with for one thing?

"A. Right.

"Q. Whether they are serving separate parts of the buying public?

"A. Right.

"Q. You said that physical proximity would not be a factor?

"A. You said it's a very subjective thing. In some cases it would be a physical—it could be a physical proximity.

"Q. Is there any rule in this policy that says [**444**] that you can't franchise dealers directly

next to one another, two of them, as Sylvania dealers, for example?

"A. No rule says we can't, no.

"Q. Do you know any occasion where that has happened, one door to the next door, two Sylvania dealers?

"A. Sure.

"Q. All right. How about the volume that a dealer can provide, is this a factor in deciding whether you should franchise him or not?

"A. Certainly. And here it isn't a question of the big dealer, it's whether the guy is a growing dealer. We have many dealers that we start out where—I can think of a couple of dealers that were practically, you might call, service men, that today have beautiful stores and that have built their organization and do a hundred and fifty, $200,000 with us.

"Q. You are looking for growth potential?

"A. Right.

"Q. Ability to sell?

"A. Yes. And businessmen, pay their bills."

* * *

[**445**] "Q. The credit department, as I understand, has the power to place a credit hold on any particular order for a dealer at any point in time if they deem it advisable; is that true?

"A. Right. They set the credit guideline on a dealer and they determine whether the guy is within his credit limit and whether he is current in his payments, or whether they have to hold an order.

"Q. A credit hold could be of a temporary nature until he paid down the account, right?

"A. Right.

"Q. Or it could be because he hasn't been paying bills, right?

"A. Right."

* * *

"Q. Do you make it a practice, or have you in the past, Mr. Morgan, to review any of your dealers' financial statements or Dun and Bradstreet reports, or whatever?

"A. No.

"Q. This is a credit job, right?

"A. Right. Those guys are professionals. That's their job."

[446] * * * "Q. Now is it Sylvania's policy that the franchising of a branch dealer, again like Alco-Paramount, in San Francisco, would have to be approved by the existing Sylvania dealers in San Francisco?

"A. No.

"Q. Is there any policy of notification to existing dealers that a new franchised dealer is coming in?

"A. Yes. We tell them we have another dealer.

"Q. What is the reason for this?

"A. Just to tell them.

"Q. Suppose they object to them?

"A. Suppose they object? We run our own business.

"Q. This wouldn't affect your thinking?

"A. No, absolutely not. And, incidentally, they **[447]** always object.

"Q. I would assume that.

"A. Right."

* * *

"Q. I would assume the more dealers you get, the more this problem comes up?

"A. That's right.

"Q. Is there any other manufacturer, to your knowledge, other than Magnavox which has a similar policy as the elbow room policy?

"A. In our business it's Magnavox and ours, I would say. There's other people who try this sort of thing.

"Q. But those are the two that you can think of that are more nearly the same in this field?

"A. Yes. For example in the range field, Caloric ranges do the same thing in the range field, but in our business it's Magnavox."

* * *

[454] * * * "Q. The allocation then was based on merchandise actually shipped through August 31st, 1965?

"A. Right.

"Q. Not ordered, shipped?

"A. Shipped. And we had to have a figure to start from.

"Q. What Continental had actually received for the previous twelve months was the figure that you used?

"A. Eight months.

"Q. Oh, eight months. I though you said September through August.

"A. No.

"Q. I see. It is just for the year 1965 then?

"A. That's right.

"Q. January 1st to August 31st?

"A. It was eight months.

"Q. The amount that was shipped, based on your figures, gave Continental some 544 sets?

"A. Right.

"Q. This did not include any credit for the August 27th order?

[455] "A. Right.

"Q. Or any part of the July 3rd order that had not been sent yet?

"A. Right. This applied to everybody."

* * *

"Q. Now did you place a hold on the August 27th order a sales hold, I mean?

"A. Let's say when this thing hit, it really started about August the 20th. By September the 1st—I mean, we knew that this thing was right across the country, it just didn't happen overnight. It took a couple of days. And we not only had—this order was just one of many. We had franchises from department stores. We had a whole desk of orders this high, from people all over the country. And we had to make a decision that we would send out a wire and we would not franchise any of these dealers; we are going

to take all the merchandise that we can make between now and the end of the year and we are going to give it to our existing dealers because we can't even supply them, and we certainly are not going to put on new dealers, and we are going to come up with a formula to try to treat everybody fairly.

"So in doing this, we used the September 1st **[456]** figures. All I did was figure out how many sets we could make until the end of the year, and then come up with a rule of thumb that would make sense. And with the number of sets that we were going to make between now and the end of the year, I correlated it to roughly what the dealers, all dealers had bought in the first eight months, so that I could say, 'For the first eight months this is what you bought. This is what we can give you for the last four months. And you will see that it's a pretty good allocation. We are not selling to our employees. We are not selling any new dealers. We are giving all the merchandise to you.'

"And this is where I had to have an eight months' figure.

"Now there was a lot of orders that were, let's say, not filled completely. There was a lot of orders that come in that last week of August, even though they were credit approved and everything else, that could not possibly go through that order department, could not have gone through the mechanical process of writing up the

orders and getting them over to the warehouse, and so forth. If we were to try to add these things, we would have been working **[457]** another four weeks, trying to figure out an allocation because we couldn't get the data together."
* * *

Testimony of Donald E. Carroll

[466] * * * Q. When you began in 1963, did you franchise the dealers that existed in the territory? A. Those who were already franchised?

Q. Yes, sir. A. Did I refranchise them?

Q. Yes, sir. A. No, sir.

Q. But I assume that you solicited new potential dealers in San Francisco in 1963, correct? A. Yes.

Q. Is that right, sir? A. That is correct.

Q. All right. Now, in 1963 Sylvania had certain sales policies that you were aware of, is that right, Mr. Carroll? A. That is correct.

Q. And Sylvania also produced a sales and operational manual for use of yourself and your District Sales Managers, is that correct? A. Correct.

Q. Let me show you a reproduction of such a manual. You can ignore the tabs. I have placed those there. Without reading the manual, can you just glance at it enough to tell me whether you have seen such a manual before? **[467]** A. Yes, sir, I have.

Q. Is it not a fact, Mr. Carroll, that is a copy of a manual which Sylvania asked its District Managers

to use in 1963, 1964 and 1965? A. I wouldn't be able to tell these years this was the manual. This is a manual that we used. We up-date our manual from year to year. I am not sure as a matter of record which manual was used.

Q. All right. So, was such a manual used in 1963? A. It is my recollection, sir, that the manual was given to me not on coming to Sylvania but at a later date. So I would think it probably wasn't until '64.

Q. I would like to show you Exhibit B which is the *forward* page from this manual. Sometime in 1964 do you recall that the manual was in use, sir? A. By my memory I would say so.

Q. All right. In the third from the last paragraph of the forward Exhibit B it states:

"The complete understanding of the contents of this manual is essential. It is to be used not only as a reference manual as to forms and procedures but as an educational and operational manual."

[468] Was that your understanding, sir, of that document? A. Yes.

Q. It goes on to say:

"Read it, study it, use it often. Under no circumstances allow it to be loaned or lost."

Now, this manual in general outlines the S.L.D. program. You were aware of that, of course? A. Yes, sir.

Q. Let me show you Exhibit F which is a two-page package from the manual we have been talking about, entitled "Sales—Section 2—S.L.D. Program."

Now, the first paragraph says, Mr. Carroll:

"Sylvania home entertainment products are only sold through franchised dealers.

"The franchise is not a meaningless paper that puts the dealer in a profit squeeze with weak competitors."

Skipping a sentence.

"The franchise contains a good comfortable selling climate by creating Elbow Room in a sensible territory based on market and dealer potential. Same brand competition is eliminated."

Let me stop there a moment and ask you: Wasn't that your understanding of the S.L.D. program in 1964? A. May I give other than a yes or no answer to that? **[469]** I think it requires a little clarification at this point.

Q. All right, sir. A. On that point, you skipped a very important sentence in that paragraph to the understanding of the S.L.D.

Q. Let me back up a moment and read the entire paragraph. I will start at the beginning.

"The franchise is not a meaningless piece of paper that puts the dealer in a profitable squeeze with weak competitors. The franchise is based on stability of direct factory relationship with a strong, straightforward program of policy and understanding. The franchise contains a good profitable selling climate by creating Elbow Room in a sensible territory based on market and dealer potential. The same brand competition is eliminated."

Now, wasn't that your understanding of the S.L.D. program in 1964, sir? A. With the exception of the terminology of the last sentence.

Q. "Same brand competition is eliminated."? You don't agree with that? A. That is true. I do not agree with that.

Q. You do admit that this practice outlined was contained in the operational manual, correct? A. Right.

[470] Q. And this manual you do admit was utilized by the District Sales Managers under your supervision? A. Correct.

Q. Is it not a fact, Mr. Carroll, that your District Sales Managers were in effect told by this manual that this is the S.L.D. program, this paragraph that we have read? A. This is a guide to the S.L.D. program?

Q. Yes, sir. Is that right? A. A guide to the S.L.D. program.

Q. Is that correct? A. That is correct.

Q. Turning to page 2 of the document you have before you, sir, Exhibit F, first sentence.

"Straight line distribution is Sylvania's concept of the proper way to distribute and market products in the metropolitan markets. It incorporates the best thinking, most up to date ideas, finest communications between factory and dealer yet devised. It is the industry's finest factory direct program."

This paragraph encompasses some of the things that your salesmen were told to [tell] prospective dealers, isn't that right? A. Correct.

Q. Down to the fourth paragraph, Mr. Carroll:

"S.L.D. also eliminates same brand competition. **[471]** Sylvania wants fewer dealers and quality rather than quantity. By not overfinancing, straight line distribution eliminates vicious price cutting and establishes suggested prices. That enables each dealer to make a fair profit and each customer to receive an outstanding value."

Now, the information contained in that paragraph I have just read to you was also information which your salesmen were told to represent to prospective dealers? A. As a guide. Again the first sentence is not correctly worded and it was so stated.

Q. That is your personal opinion at that time. A. That was my practice.

Q. We will get to your practice. I am just asking you whether or not the information contained in this paragraph was used by your salesmen in 1964 and 1965 as representations of company policy when they contacted prospective dealers? A. Not verbatim.

Q. It is your testimony here today, sir, that your salesmen did not represent to dealers that same brand competition would be reduced or eliminated? A. That is different. This says eliminated. It doesn't say reduced. I am testifying, if I may, that our men including myself never said to our dealers or represented to **[471-A]** our dealers that that same brand competition was eliminated.

[Continued on next page. Nothing omitted.]

[472] Q. Is it your testimony, sir, that none of your salesmen ever represented that same brand com-

petition is eliminated, to any dealer? A. I would never, I would not say never, I'm saying that it was our practice not to do that and it was my counsel to them not to do it.

Q. And you told Mr. French that, did you not, sir? A. Told him not to say it was eliminated?

Q. Yes. A. Yes, I did.

Q. And you in fact, in substance, told Mr. French "when you contact a prospective dealer you are not to tell him that our program eliminates same brand competition;" is that a correct statement? A. I'm sure I did.

Q. And you're sure you did that after you got here in 1963? A. I have done it all my life, so I'm—I have been 35 years in business, so I'm sure I did.

Q. But you haven't been 35 years with the Sylvania Company, have you? A. No, but I have been 35 years in servicing retail dealers.

Q. So generally what you're telling me is your basic understanding of the industry practice, isn't that right? **[473]** A. That is true.

Q. And it is industry practice according to your opinion at the present time that manufacturers do not tell dealers that they are going to eliminate same brand competition; that's what you're saying, isn't it? A. That is my understanding.

Q. The next paragraph down, paragraph 5, Mr. Carroll, in this document, Exhibit F, says:

"Elbow Room gives every Sylvania dealer a geographic area in which to sell our Sylvania products."

Your salesmen represented that sentence to prospects, did they not? A. Again, not out of context and not verbatim for that one sentence.

Q. I'm not saying that they read this manual to your dealers, in substance, didn't they represent that concept to them in 1964? A. Not in substance, no.

Q. Did you tell Mr. French not to represent that this was the meaning of Elbow Room? A. In the same way I told him that he cannot say it eliminates. I would be glad to enlarge on that if you would like me to.

* * *

[475] * * * Q. All right, sir.

Paragraph 5 in the manual goes on to say:

> "S.L.D. does not promiscuously franchise dealers without first studying their size, location and effect on the market, as well as other Sylvania dealers in the area. By franchising dealers by territory Sylvania becomes an important profit factor to its dealers. This creates good relationship and proper respect between factory and dealer."

Is it also your testimony you told Mr. French not to represent the substance of that paragraph to dealers? **[476]** A. To the contrary.

Q. Oh, you told him he should represent that paragraph, is that correct? A. That's correct.

Q. I would like to show you another two pages taken from your sales and operations manual, Exhibit C, sir. Will you look at the second page of that, please, near the bottom.

Your manual states:

> "How much Elbow Room is there really in our program. It usually following industry statistics as evidence of our limited number of dealer approach. And notes: we give super elbow room while elbow room is adequate to make the program a success."

Did you tell Mr. French in 1964 not to represent the substance of that paragraph to prospective dealers? A. No, I did not tell him not to represent. We are getting into a couple of negative negatives there. Shall I clarify that? Would you clarify that for me?

The Court: You may clarify it, if you wish.

The Witness: I represented through—we represented as a team the Elbow Room concept as it is put forth here. That's a positive.

Q. You represented as a team the Elbow Room policies as described on Exhibit, is it C, before you? A. Says B on the top. Is C on the righthand? Yes.

[477] Q. Right. A. Yes sir.

Q. Fine. Now, of course, the Maguire plan of financing was presented to dealers through salesmen, was it not, in 1964-1965? A. Maguire forms were presented to dealers for signature, yes.

Q. Mr. Carroll, how was a dealer going to know what the Maguire program was if he didn't talk to the Sylvania salesman about the program? A. True, the forms were presented by our salesmen.

Q. And the basic terms were outlined by the salesmen, sir? A. The basic terms, correct.

* * *

[484] * * * Q. Now, did the physical proximity of a prospective dealer to the other franchised Sylvania dealers in the same area have any bearing on your decision? A. Yes.

Q. Would you explain that, please? A. Yes, under the Elbow Room philosophy the basic concept of growing the Sylvania business with our dealers is that within a given area there is enough potential Sylvania business for each of the dealers we franchise to prosper and grow.

Q. And it is not in Sylvania's interest to franchise more dealers than in your judgment could all profit from selling Sylvania in the same market area? A. That's correct.

Q. And you as Regional Sales Manager would make a decision of that type? A. With my District Manager.

Q. In consultation with your District Salesmen? A. And with the reports that are given to us.

Q. What reports? A. The P.I.A. County penetration reports as primary guide. We also get utility reports and obviously the day to day reports of the District Manager observing the dynamics of change in his given district.

[485] Q. So I take it that in 1963 to 1965 you personally felt that it was in your company's best interests to keep the dealers in each market area within the concept of the Elbow Room policy? A. Correct.

Q. And that was company policy throughout those years, correct? A. Correct.

* * *

[492] * * * Q. Didn't you in fact become indoctrinated into the elbow room policy at a training program in Batavia? A. Yes, I did.

Q. That was after you were an employee, was it not? A. That wasn't the first—you asked me when was the first.

Q. All right. And an inherent part of this elbow room policy was and is what is called Sylvania's ability to give predictable profit to dealers in any given territory, isn't that correct? A. Fair return, correct.

Q. And elbow room in that sense means having fewer dealers in competition with one another, correct? A. Correct.

Q. In other words, the more dealers you have in competition the thinner the slice of pie is for each dealer? A. That's true.

* * *

[497] * * * Q. Do you have any personal knowledge as to how these districts, how these salesmen's districts were picked geographically or determined? A. Yes, sir.

Q. All right. How was that done? A. It's done on an approximate basis by Sylvania management with the tools of the electronic industry reports; trying to give each district manager close to one percent of the United States to service as far as the potential of the district is concerned.

Q. May I stop you there just a moment. So that Mr. French's territory would, under this determination, approximate a geographic area in which approximately one percent of the total industry sales

had been made during some point in time? A. Correct.

Q. And Mr. Hines in the Sacramento territory, northern territories, the same would be true for him, correct? A. Correct. Give or take a quarter or a half of percent.

Q. Okay. And your company as a policy tries to cover each of these large territories with franchised dealers utilizing the elbow room policy, is that correct? [498] A. That's correct.

Q. That's your personal practice, isn't it, sir? A. That's correct.

Q. You recommend it to your salesmen? A. That's correct.

Q. Now under the elbow room policy, Mr. Carroll, would you normally franchise a prospective dealer who was located in close physical proximity to an existing dealer? A. What do you mean by "normally"? Would we ever, or do irregularly?

Q. I will rephrase it if you don't understand the question. Under your elbow room policy as you understood it in 1964 and 1965, would you approve a prospective dealer who wanted to open a store in close physical proximity with an existing dealer? A. I could, depending on all the factors. We wouldn't seek out such an arrangement.

Q. It would be rather unusual for you to do so in those years, would it not? A. Yes. There were fewer of those cases than those that were separated.

* * *

[500] * * * Mr. Miller: Q. As a matter of fact, it wasn't common to find a Sylvania dealer in 1964

or 1965, anywhere in your region, sir, who sold merchandise below the company's suggested pricing? A. It was uncommon.

Q. Uncommon? A. Correct.

Q. I'd like to talk to you just a moment about the policies as you understood them in 1964, 1965, respecting the franchising of branches. You were aware, sir, in those years that one or more dealers in your region did have branch stores? A. Correct.

Q. Now, if a dealer at the time he is initially franchised has a single location but thereafter opens another location, he, as I understand it, has to get pre-approval from his district salesman, if it is in his own territory, or the salesman in whichever territory he plans to open the branch, correct? A. Correct.

Q. He must do this before he would be allowed a franchise, is this not so? A. That is correct.

[501] Q. Not only that, however, also your approval is necessary where the branch is going to be located in another salesman's territory? A. That's correct.

Q. And that was the policy in '64 and '65? A. Correct.

Q. Now as I understand it further, there was no written franchise form, such as Exhibit 3 here, signed for each new branch opening during those years, is that correct? A. That is correct.

Q. As a matter of fact, verbal notification only was given to the dealer that this next branch was an approved location by Sylvania, isn't that so? A. Given to the dealer or to the Sylvania factory?

Q. To the dealer, sir. A. To the dealer—well, he would be put on the mailing list; and therefore would get the notification in that way, but there was no form sent to the dealer saying he was franchised, to my knowledge, to my memory.

Q. How did the dealer know he was franchised in 1964, 1965? A. His district sales manager from Sylvania would tell him.

Q. Verbally? **[501-A]** A. Correct.

Q. And that was a consistent policy through 1965 also, was it not? A. I believe so.

(Continued on next page.)

[502] Q. Some notification was also sent to Batavia, New York, the factory; you have already alluded to that. A. Correct.

Q. And that was prepared in some manner by the district salesman involved? A. That is correct.

Q. Were you given some written notification yourself? A. Not written. Copy of his notification to Batavia.

Q. Would this be in a form of a memo of some kind to the factory? A. Well, it should have been in the form of dealer—I forget the terminology of the form—but we had a dealer application form, dealer information form. It could have been just a memo.

Q. Let me show you Exhibit 20-B which is what you are talking about. Dealer information form. A. Correct.

Q. Mr. Carroll, are you telling me that such a form was filled out for every existing dealer? A. No.

Q. As a matter of fact, that form 20-B was filled out originally after the initial franchise whether the original franchise was for one or more locations, correct? **[503]** A. Correct.

Q. Thereafter, it was verbal notification to the district salesman and verbal notification by him to you that the franchise for some specific location was requested, right? A. That's the first step.

Q. And then I take it the second step is that you in consultation with the salesman or salesmen involved would make a value judgment? A. Correct.

Q. And among you, you would decide whether a franchise should be granted in that particular location? A. Correct.

Q. And thereafter, that decision, either yes or no, it would be relayed to the dealer verbally by the salesman? A. Correct.

Q. Now, after Batavia, New York is notified, I assume that when you say Batavia, New York is notified—by the way, you mean the sales division in Batavia? A. Correct.

Q. Headed by Mr. Morgan as vice president, Mr. Steiner as national salesman and yourself, correct? A. I wasn't in Batavia.

Q. I understand. But on the chain of authority. A. Yes.

[504] Q. Mr. Steiner was in Batavia? A. Yes, correct.

Q. Mr. Morgan was there? A. Correct.

Q. During 1964 and 1965, sir, is it a fact that Mr. Steiner was your immediate superior? A. That is correct.

Q. Now, had you ever approved a franchise location in your region but to have Mr. Steiner and Mr. Morgan supersede your judgment and disapprove it? A. No.

Q. Never happened, has it? A. Not to me. Was that the question, did I?

Q. Yes, sir. A. Thank you.

Q. Now, this arrangement whereby if a branch is moving from one territory to another territory, that is, an original franchise store in Mr. French's territory, for example, and the store owner opens a branch store in Mr. Hines' territory, for example, it is necessary for Mr. Hines to approve that new location, correct? That is my understanding of it. A. Yes.

Q. Now, that is a verbal or tacitly agreed to **[505]** policy among salesmen and yourself, is it not? A. Well, it's part of the district sales manager's job description that he's responsible to select and build the territory. So it is more than just verbal.

Q. It is not contained anywhere in the sales manual, is it, sir? A. If it isn't, sir, it certainly should be in there. Job descriptions I have read it is contained.

Q. I would like to refer the witness to page 178 of his deposition commencing at line 11.

"Q. Well, is it fair to say, Mr. Carroll, that your policy was to attempt to have dealers expand into areas that you needed coverage in more so than the dealer thought that he wanted to go into?

"A. Definitely. Our policy is to franchise in areas where we feel we need coverage. That is true.

"Q. Did Mr. Hines have to give approval to Continental opening a Sylvania store in Sacramento before it was opened?

"A. Did he have to give approval?

"Q. Was his approval required?

"A. Obviously not, because Continental opened a store there.

"Q. Under your policy, was it supposed to be **[506]** approved and give his approval before Sylvania merchandise was sold in Sacramento?

"A. Under our verbally and tacitly agreed upon procedure but not policy. There is no written policy about that."

A. Right. I thought we were talking about franchise. That questioning was talking about selling of the merchandise, whether it was franchised or not, as I understood it.

Q. So you are saying now that it is a company policy, sir, that although the salesmen whose territories are involved must approve if a branch is going in those territories? A. Correct. Excuse me. Approve if a branch is to be franchised?

Q. By Sylvania. Correct? A. Correct.

* * *

[511] Q. And did you find that Continental TV at that time met all of your standards? A. Correct.

Q. Did you find that Continental TV management was growth oriented? A. Correct.

Q. Did they seem to have adequate financial resources? A. As far as our initial size of payment was concerned our credit department said so.

Q. All right. As a matter of fact, Continental agreed to adhere to the advertising policies, correct? A. Correct.

Q. And also they promised to adhere to the Elbow Room policy? A. I can't say directly to that, because they really have nothing to do with the Elbow Room policy. That is the unilateral policy on Sylvania's side. We don't ask the dealer to adhere to the Elbow Room policy.

Q. You ask the dealer initially, Mr. Carroll, to seek prior approval before he sells Sylvania merchandise at other than a franchised approved location? A. That is correct.

Q. And Mr. Shahood gave such a promise on behalf of Continental TV, did he not? [**512**] A. I assume he did.

Q. All right. Now, from time to time is it not a fact that you and Mr. Shahood on behalf of Continental TV had discussions about possible expansion of Continental TV into other trade areas? A. That is correct.

Q. Didn't you feel that it was your company's role and particularly your role personally to try to channel Continental's expansion into areas that you and your company needed more penetration in? A. Provided that it was suitable for him, correct.

Q. And you also discussed these things with Mr. French on a continuous basis? A. Correct.

Q. Now, were you aware, of course, after the San Leandro and the Stevens Creek stores were opened that later in 1964 San Francisco became a location for Continental TV? A. Correct.

Q. Did you have any objection to that location? A. Negative.

Q. You discussed it with Mr. French, did you? A. Correct.

Q. And Mr. Shahood? A. Correct.

Q. Now, Mr. Hallday was not in the area as yet at the [**513**] time that the San Francisco store was opened? A. I think he was.

Q. Did you discuss it with Mr. Hallday? A. I did.

Q. That San Francisco Continental store, did it fit with your company's policy respecting Elbow Room? A. It did.

Q. It was located on Geary Street, correct? A. Right.

Q. So I take it it is fair to say that your company needed greater penetration in San Francisco at the time that Continental store was approved? A. Yes. Correct.

Q. I would further say it is fair to remark that particularly on Geary Street and its surrounding market area you needed particular help? A. We had no location in that area.

Q. And you told Mr. Shahood that, didn't you? A. Correct.

Q. All right. Also in the fall of 1964 you corresponded with Mrs. Barnes concerning Continental TV. Let me show you Exhibit I, sir, and ask you to just review that to yourself for a moment. Have you finished? [**514**] A. Yes, I have.

Q. Now, you wrote to Mrs. Barnes and she was the Credit Supervisor at that time? A. Correct.

Q. It is dated September 12, 1964.

"Confirming our conversation on subject, it is my considered opinion that Sylvania's investment in time, money and service to subject will pay off far better than most accounts in which we invest.

"George Shahood, President of subject has brought our program from A to Z and has transferred his retailing efforts (bordering on genius) from Muntz to Sylvania. The results to date speak for themselves.

"From a sales department standpoint this is an ideal account for our Maguire plant. The reliable up to the minute control of every piece of merchandise and the regular payoffs as sold plus the sound financial condition of the personal guarantor, added to, the fact that each of his branches are made to show a profit on its own, would justify credit extension up to any needs based on actual sales. By using Maguire for all of his purchases you will have an accurate record from payoffs as to total Sylvania sales and therefore will be able to counsel with George if he seems to be buying more than is logical from his needs [515] standpoint.

"Thanks for your cooperation. This is only the beginning of big volume accounts and we will work very closely with you to get maximum results with minimum risk.

"Don Carroll."

You sent copies of this to Mr. Lockhart who is the Controller of Sylvania and to Mr. Callahan, is that correct? A. Yes.

Q. Mr. Callahan who is the National Credit Manager, correct, sir? A. Correct.

* * *

[520] * * * Now, how many people in the trade area would you say there are in greater Sacramento? A. How many people?

Q. Yes, sir. A. Talking about 65 now or 70?

Q. Well, let's take 1964-1965. A. In round figures, a half million people.

Q. Now, in considering whether a market area is attractive from the standpoint of your company, is the total industry amount of sales, say, in some period of time, is that a criteria that is considered? A. Correct.

Q. Is that very important in judging the need for dealers in a territory? A. It's an important factor.

Q. Now, Mr. Carroll, isn't it a fact that in 1965 the market area in Sacramento had been reported as having the highest saturation of colored TV owners of any trade area in California? A. Industry saturation.

Q. Industry saturation, yes. A. Yes.

Q. I think Los Angeles then passed it at some later time, but at that time that was so, wasn't it? [521] A. Correct.

Q. Do you recall how high the saturation was in 1965 on industry total basis? A. No.

Q. 20 percent sound— A. Possible.

Q. —possible? Does it refresh you in any way? A. It sounds correct, yes. It seems to me at that point the national average was well under that.

Q. That meant that—well, let me ask you, what does that 20 percent figure mean? A. That meant that 20 out of every hundred homes in Sacramento had a colored television set.

Q. O.K. Now, prior to September of 1965 you were aware of the dealer who did business under the name of Handy Andy in Sacramento? A. Prior to 1965?

Q. Prior to September, 1965. A. That's correct.

Q. When did you first learn of Keith Anderson and/or Handy Andy in Sacramento? A. In my first year in California, 1960.

Q. All right. Mr. Anderson, of course, wasn't a Sylvania dealer in 1960, was he? [**522**] A. I wouldn't know, I wasn't with Sylvania at the time, counsel.

Q. All right. Did you call on Handy Andy yourself in those days? A. Again as a supervisor with my District man for Stromberg Carlson.

Q. And with your sales personnel did you attempt to solicit orders from Mr. Anderson's store? A. With my District Manager, yes sir.

Q. Is it a fair statement to say that from about 1960 until you came with Sylvania in 1963 that you periodically called on Mr. Anderson's store? A. Correct.

Q. In 1963 you came to work for Sylvania. Did you learn sometime soon thereafter that Mr. Anderson became a Sylvania dealer? A. Negative. He

was a Sylvania before I came to Sylvania in '63, but I did not know which year he joined us.

* * *

[**523**] * * * Q. Mr. Carroll, did you learn at some time after you started with Sylvania that Keith Anderson also owned an interest in a distributorship handling Sylvania merchandise in Fresno? A. I did.

Q. You have known that since about 1963? A. I did.

Q. Do you know of any other dealer in California that has an interest in a distributorship? A. I don't know of any.

Q. I am talking about Sylvania dealers, of course. A. I don't know of any.

Q. Do you know whether or not the Sylvania distributor people are requested or instructed to use the elbow room system as they franchise in turn retail dealers? A. I don't—I am not conversant with the wholesale distribution policy.

Q. Now is it not a fact that Handy-Andy in Sacramento was the largest volume Sylvania dealer in Mr. Hines' territory in 1963? A. That is correct.

Q. The next largest, probably two, one in Reno and one in Stockton; would you say that's a fair statement? [**524**] A. Correct.

Q. And his status as the largest Sylvania dealer in Mr. Hines' territory has remained constant from 1963 to the present time, has it not? A. That's correct.

Q. Now in 1963, from the information we received from your company in written interrogatories under oath, Mr. Carroll, it appeared that there were 7 dealers in the Sacramento County area. Would that accord with your recollection, sir? A. What year?

Q. 1963. A. I can't read it from here. Would you give me the dealer's name?

Q. Handy-Andy, J. W. Brewer, Tri-State Sales, North American Appliance, North Sacramento T.V., Allied Builders Credit and Bank Furniture. A. J. W. Brewer is not a dealer. He is a customer, but not a dealer, not a retailer.

Q. Who was that, sir? A. J. W. Brewer.

Q. Yes, sir. As a matter of fact, the purchases by Brewer in 1964 and 1965, to your knowledge were sold outside the Sacramento County area, isn't that true? [525] A. Not exclusively. They were sold to motels and hotels.

Q. Yes. But what I am saying is that his customers were located outside Sacramento. A. Some were and some weren't.

Q. The interrogatories indicate, sir, that, for instance, in 1964, the entire purchase shipped to Brewer was sold from outlets outside the city of Sacramento, specifically Reno, Nevada and Bijou, California. Does that accord with your recollection? A. I wouldn't dispute that. Really I am not in any position to know. My first response was it wasn't necessarily so.

Q. All right, sir. For instance, in 1964, Mr. Anderson's firm in Sacramento purchased almost a quarter of a million dollars wholesale with your company.

A. I am sorry. I didn't respond—you interrupted me when I said about Brewer. One of the other seven, Bank Furniture, that has to be a bank who is flooring for one of the other dealers. I have no recollection of such a dealer.

Q. Bank Furniture? A. And Allied Builders Credit is a fin[illegible]ce company, not a dealer.

Q. The interrogatories under oath indicated that [526] amount of purchases by those entities in 1963, and you say you don't have a recollection? A. They were not retailers—well, Allied Builders Credit, ABC, is a finance company a la J. P. Maguire Company, to bring it to your term of reference.

Q. So it was really—all right, sir. So Allied Builders Credit and Bank Furniture were the two you mentioned? A. Right.

Q. These were not retailers. So that we had five retail outlets in Sacramento in 1963, correct? A. '63?

Q. Yes, sir, A. Okay.

Q. In 1964 a number of outlets went down to really three; Handy-Andy; J. W. Brewer and Tri-State Sales commenced that year, correct? A. Correct.

Q. As I say, Handy-Andy purchased about a quarter of a million dollars of Sylvania products, Brewer purchased about $34,000, but sold it outside—from outlets at least outside the county of Sacramento. And also in 1964, the interrogatories indicate, Mr. Carroll, that the Brewer Company only purchased one color TV set. You have no recollection? [527] A. No exception to that.

Q. In 1965, the situation is the same as to the indicated number of dealers, that is, Handy Andy, J. W. Brewer, Tri-State Sales, all appear as dealers. Handy Andy purchases almost $1,000,000 wholesale in merchandise. J. W. Brewer purchases $11,000 for the year; again, one color TV set, and again, shipped to outlets outside of the City and County of Sacramento. Tri-State, the third indicated dealer, purchased $327 for the year. No color TV sets. Now you have no information that these figures and these indicated dealers are inaccurately displayed here, do you? A. No.

Q. All right, sir. Now in 1966, although we don't have the money values of purchases, it is true, is it not, that in June of 1966, J. W. Brewer terminated as a Sylvania dealer? A. My memory doesn't have any termination—as I said earlier, counsel, he was not a dealer, not a retailer. He was a customer who handled sales to motels and so forth; but a consumer would not go into J. W. Brewer and buy a set. So my answer is I don't believe that he terminated, [528] but he may have.

Q. All right. Tri-State Sales—do you recall that they terminated in fact, didn't purchase any product in 1966? A. Correct.

Q. So that in 1966, Mr. Keith Anderson of Handy Andy had a virtual monopoly in Sylvania products in the City and County of Sacramento, is that not right? A. We are omitting one channel distribution, which I don't know the years on, but it certainly was in that period from '63 to '66, and that was a branch of Sherman Clay.

Q. Sherman Clay. Do you have any information as to why Sherman Clay was not shown on the answers to interrogatories?

Mr. Popofsky: Your Honor, those are prepared by counsel in cooperation with the client. I think the explanation is that the question called for shipments to the main offices in Sacramento and the question, therefore, simply didn't call for Sherman and Clay, which was shipped to main offices elsewhere.

The Court: Perhaps Mr. Carroll is familiar with Sherman Clay.

The Witness: Yes. My counsel just answered what I would have answered.

[529] Mr. Miller: Q. All right. So you think there was a branch of Sherman Clay franchised for Sylvania products in Sacramento in 1966? A. Again, my memory can't tell you which years, but certainly when Sherman Clay was a franchised dealer, the Sacramento branch was a franchised branch.

Q. You don't recall the year? A. Not from memory, but it is a matter of record.

Q. Mr. Carroll, do you recall the amount of product in dollar amount that was inventoried, displayed and sold from the Sherman Clay branch in Sacramento for any given year? A. The only one of those three things that you are asking me that I would have—would have been given any information on was a display. There was no report by branch from Sherman Clay to us as to how much was sold in that branch.

Q. So you wouldn't know? A. I wouldn't know.

Q. What kind of a store would you describe Sherman Clay's branch in Sacramento as being? A. It is a music store with television and stereo departments.

Q. So it is not—I am sorry. Are you through? A. Pianos and organs and instruments.

[530] Q. So it is not a pure television and appliance store such Handy Andy? A. It is not.

Q. It is not a discount store, is it? A. Negative.

Q. Do you have any recollection as to that particular branch of Sherman Clay as to their volume of sales for any given year? A. I wouldn't have that information available to me.

Q. Besides Sherman Clay for some year in here, is it not true that Handy Andy was the only other dealer handling Sylvania products in volume in the Sacramento County area? A. That's correct.

Q. Is it not a fact, sir, that— A. May I back up on that question?

Q. Yes, sir. A. Sacramento County?

Q. That's right. A. You added the word "area." There are surrounding areas in which there are other dealers.

Q. Well, I think you had a dealer down in Roseville, for instance, did you not? [531] A. North of Sacramento.

Q. Roseville is north. A. You see, the Sacramento papers and everything covers all of that area, so I had to back up on that response.

Q. That's Lenzis? A. Correct.

Q. How much did Lenzis do in 1966, in purchases? A. '66?

Q. Uh huh. A. Again, you are asking me to remember years. At this point I am not certain—he was about a $75,000 a year account at dealer cost, which would translate into a little over $100,000 at retail.

Q. I refer you to page 59 to refresh your recollection.

Mr. Popofsky: What page, counsel, please?

Mr. Miller: 59, line 5.

"Q. There is a dealer near Roseville who handles Sylvania products, or had been?

"A. Yes.

"Q. Is this Lenzis?

"A. Lenzis, yes.

"Q. Do you recall what their volume was in 1966, approximately?

"A. Sixty.

[532] "Q. $60,000?

"A. An estimate."

Does that help refresh your recollection that they did about $60,000? A. That was a '67 deposition, so that would be pretty accurate.

Q. All right. So we have Lenzis up in Roseville. Now, how far was Roseville from the City of Sacramento would you say? A. 15 minutes.

Q. By automobile? A. By automobile.

Q. Now other than this Roseville dealer, who did about $60,000 in 1966—and by the way, do you have any recollection as to what Lenzis in Roseville did in

1965? A. I would have to defer to the record. If you want to guess, I would say about the same.

Q. How about 1964? A. I don't know whether he was a dealer in '64.

Q. Okay. Now is it not a fact, sir that since 1963, the only other dealer that has been approved in the City and County of Sacramento is this branch of Sherman Clay? A. That's correct.

Q. And is it not a fact, sir, that since 1963 **[533]** Mr. Hines has not even solicited other Sylvania dealers within the City and County of Sacramento? A. Since '63?

Q. Yes, sir. A. I would say since '64.

Q. All right. And as a matter of fact, you not only agreed that Mr. Hines should not solicit further dealers, but you instructed him not to do so, isn't that a fair statement? A. That's a fair statement. Again, I hate the word instructed. I counselled him.

Q. Now, prior to June of 1965, Mr. Shahood, on behalf of Continental T.V., indicated to you that his chain of stores planned as their next expansion move to open a store in Sacramento? A. Prior to June of 1965?

Q. Yes, sir. A. He did tell me he was going to open a Philco store in Sacramento.

Q. That's right. He told you that he would not—he told you that primarily he would be handling Philco merchandise? A. Correct.

Q. And you discussed generally speaking the market **[534]** situation in Sacramento with Mr. Shahood at that time, did you not? A. Generally speaking the market situation, yes.

Q. And you told him in substance that Handy Andy was giving Sylvania more than 10 percent of all industry sales in that county, isn't that right? A. I'm sure I would have.

Q. Isn't that an accurate figure at that time? A. That is true.

Q. Now that was above Sylvania's national average as far as penetration? A. Considerably.

Q. What would you estimate the national average to be at that time? A. I can't respond to that because it is an estimation. We don't get figures on our national average, but my estimation would be about four percent.

Q. All right, sir. Of course, Sylvania, I assume, is interested in as large a share of the market as it reasonably can obtain in a given market. A. Reasonably, yes.

Q. Now, Mr. Shahood did not ask you for a franchise at that time, did he? **[535]** A. negative. He did not, so that's affirmative.

Q. As a matter of fact, in your discussions with Mr. Shahood be indicated to you that he assumed that a franchise would not be available for that location, isn't that a fair statement? A. I don't have a memory of that.

Q. Mr. Shahood also had discussions with you about the same time about a possible location in Stockton, did he not? A. Correct. I don't know about the timing, but we did have a discussion about Stockton.

Q. And you responded to Mr. Shahood that Sylvania's penetration or market shares in that market,

the Stockton market, was in need of help, right? A. Not in need of help; was below national average.

Q. Didn't you feel that your company needed help with additional dealers in that area? A. Well, again, it is a matter of semantics. I don't like the word "help". We needed coverage and we needed another dealer.

Q. What does coverage mean? A. Another dealer.

Q. And you told Mr. Shahood that in substance? **[536]** A. Correct.

Q. And you told him further that Mr. Hines needed another dealer in Stockton? A. That's synonymous.

Q. If Mr. Hines needed a dealer in Stockton, you needed a dealer? A. Correct.

Q. If Mr. Hines did not need another dealer in Sacramento, neither did you? A. That's correct.

Q. So I take it that there was no consideration given as to whether Continental would be compatible with Handy Andy on Fulton Avenue in Sacramento? A. There was no consideration given, that's correct. It wasn't discussed.

Q. The only consideration, as I understand your testimony, was whether or not Sylvania needed another outlet there, and that decision on that was that you did not? A. That discussion—would you rephrase the question—repeat the question.

Q. As I have understood your testimony to date, Mr. Carroll, that when you first considered Continental going to Sacramento, that the chief consideration with you **[537]** personally was whether or not Sylvania needed another outlet in the City and County

of Sacramento. A. Well, as we responded before, we never considered the Continental going to Sacramento because Mr. Shahood never discussed the possibility.

Q. But had he discussed it, the decision would have been negative, correct? A. We can't say that. We have to evaluate all of the factors.

Q. Mr. Carroll, is it not a fact, sir, that in August of 1965, you would not have approved a franchise for any dealer in the City and County of Sacramento? A. That is not correct.

Q. It is not, sir? A. It is a fact that we did not, but it is not a fact that we would not, if I understood the question.

(Continued on next page.)

[538] Q. I refer you to page 186 of your deposition, Mr. Carroll, commencing at line 2.

"Q. And you are not encouraging new locations in Sacramento to date, are you?

"A. No.

"Q. You haven't for some years?

"A. We are getting four more percent this year than we did the year before. In other words, we are getting a good distribution, so that is true.

"Q. In your opinion, Mr. Carroll, if Continental T.V. had continued to operate in Sacramento with Sylvania merchandise, would that have reduced the penetration of Sylvania in that area last year than the year before?

"A. Would it have reduced the penetration?

"Q. Yes.

"A. I don't think so.

"Q. Is there any reason that you know of today why Keith Anderson, Handy Andy and Continental T.V. were not compatible in Sacramento?

"A. As I say, we never even discussed it.

"Q. You never considered the fact that Keith Anderson and Continental T.V. might or might not be compatible in Sacramento?

"A. No. The discussion prior to that was not **[539]** whether we would be compatible but whether we needed, as you put it, another outlet. The answer was we didn't.

* * *

"Q. In 1965, in September, in the fall, I take it from your testimony you would not have approved a franchise for any dealer in Sacramento for Sylvania products?"

Page 187.

"Mr. Popofsky: May I have that question read back please?

"(Record read.)

"Mr. Popofsky: No matter what the circumstances?

"Mr. White: Q. For a new dealer, branch dealer or anything else?

"A. In the fall?

"Q. Yes.

"A. What do you mean by the fall?

"Q. Sometime in 1965.

* * *

[540] * * * "Q. I mean any dealer.

"A. In the fall of 1965?

"Q. Yes.

"A. In the fall of 1965 the privilege—the privilege of approving any new franchise was eliminated from September 1 on.

"Q. Let's take August, 1965.

"A. That is true.

"I wasn't in favor of any new dealer in Sacramento."

Now—

* * *

"Q. This would include Macy's or——

"A. In other words, one of the factors which we decided on in putting on a new dealer is need. Need means getting our share of what the industry does in that market place. We were getting more than—we were getting more than our share, national share of that market place and, therefore, it was a mathematical factor and a mathematical fact that Sylvania didn't need further coverage in Sacramento."

* * *

[541] * * * Q. Now, I put these questions to you, sir, and you gave me those response under oath at the time of your deposition, is that correct? A. That is correct.

Q. And they were true at that time, were they not? A. That is correct. And they are true now.

* * *

[551] Q. And, sir, is it not a fact that in your opinion at the time Continental TV could have com-

peted successfully with Handy Andy at the location on Fulton Avenue? A. Again, in my opinion, I never evaluated.

Q. Never considered it? A. Never came up.

Q. I take it the problem at the time, as far as you were personally concerned, was that Mr. Hines did not approve of the location before the merchandise was brought in for display and sale? A. The problem was that that the usual counseling of our direct factory dealer with his District Manager, Mr. French, and with me and with Jim Hines did not take place.

Q. That was one of the problems, was it not? A. Correct.

Q. All right. Now, has this ever occurred—by this, I mean dealer moves merchandise from one franchise location to a non-franchise location without seeking preapproval from Sylvania—have that set of circumstances ever occurred prior to the situation with Continental in Sacramento? A. Had it occurred prior in Sacramento or anywhere?

Q. Anywhere in your region. A. In my region? Yes.

Q. Now, what did the sales department do in such **[552]** a situation to induce the dealer to conform with Sylvania's policies? A. Assuming the dealer is franchised in another location, the District Manager can persuade him that it is in our best mutual interests or try to persuade him that he stick to the franchise location.

Q. And if he declines to do so, is there any other management tool that can be utilized to straighten that situation out? A. Management tool? Negative.

Q. Can a sales department do anything else under those circumstances? A. The District Manager who is the direct contact if that factor were added to others and he found this wasn't a continuing growth prospect and he discontinued servicing the account.

Q. He could just merely stay away, couldn't he? A. Correct.

Q. He would not call on the dealer, correct? A. Correct.

Q. And he would not talk to the dealer by phone? A. That is correct.

Q. As a matter of fact, that procedure has been utilized with such a nonconforming dealing prior to Continental's case, isn't that right? **[553]** A. I would think so.

Q. To your personal knowledge, it is so, isn't it? A. Yes.

Q. As a matter of fact, Mr. Carroll, while you were in *Delwood,* New York, Mr. Steiner told you not to have any further contact with Continental TV, did he not? A. He counseled me to stay out of it, because it was a credit matter.

[Continued on next page. Nothing omitted.]

[559] * * * Q. All right, sir. When did you first become aware of the allocation program? A. My memory of that would sometime around the middle of September.

Q. 1965? **[560]** A. After my return from Delwood.

Q. All right. Now, how were you made aware of the allocation program? A. The initial communication was a telegram.

Q. And from whom? A. John Morgan.

Q. Mr. Morgan, the Vice President of the company? A. Correct.

Q. And in substance what did the telegram say? A. As I recall it, it said to stop taking orders. It did not spell out the allocation, but that was the first indication of the allocation program.

Q. Did it give a reason? A. Not in the telegram.

Q. Have you seen a copy of that telegram from that time until the present time? A. I don't think so. You have one? I would like to see it.

Q. I can assure you I don't. A. As I recall, it was a very short telegram, said stop taking orders, explanation will follow.

Q. This would be termed, I suppose, a sales hold on all orders, correct? A. Correct.

[561] Q. Now, are you aware of any other sales hold, Mr. Carroll, that occurred at any time prior to the receipt of that telegram? A. Sales hold? I don't remember any.

Q. Correct. To your knowledge, at least, there was no previous sales hold placed on any particular dealer that you knew of in your region prior to the receipt of this general sales hold telegram? A. I think not.

Q. After you received the telegram, did you instruct your salesmen? A. Yes sir.

Q. And in substance what did you tell them? A. Exactly what the telegram said.

Q. All right. Did you instruct them to relay this information on to their dealers? A. Yes sir.

Q. It was important for the dealers to know about this as soon as possible, wasn't it? A. Right.

Q. I am sorry? A. Correct.

Q. Because dealers may have pending orders and certainly they should be informed of the fact that those orders **[562]** would not be shipped if in fact they were being held under this sales hold, correct? A. That's true.

Q. So there was that urgency in notifying dealers at that time? A. Correct.

Q. Now, when was the allocation system in fact working, and by working I mean when were shipments flowing under the allocation program? A. Well, again, as I remember it, it seemed about a two week administrative delay.

Q. Would you say—excuse me. A. Within two weeks from the date of the telegram, about the first of October.

Q. O.K. Would you say by October 1st that the shipments were flowing under the allocation program to your dealers? A. I would say so.

Q. Did you foresee this allocation personally? A. Negative.

Q. It was a surprise to you? A. Correct.

Q. Was it your understanding that all manufacturers in the industry were pretty much caught flatfooted with this unprecedented demand? **[563]** A. At that point.

Q. Yes sir. A. Yes sir.

Q. Was it also your understanding that just about all the other major, or let me say all, major manufacturers, including Sylvania, devised some type of allocation system? A. Yes sir.

* * *

[588] * * * Q. Mr. Carroll, yesterday you were asked a number of questions about the Elbow Room policy. Do you recall those questions, sir? A. Yes sir.

Q. Are you familiar with the background and the [589] origins of the Elbow Room policy? A. Yes, I am.

Q. Can you describe for us, sir, the market conditions in which Sylvania found itself at or about the time that the Elbow Room policy was first adopted? A. Yes. I came with Sylvania in 1963 and at that time the Elbow Room policy had been adopted and had been implemented in parts of the United States and at that time they were ready to implement it energetically in Northern California and hired me coincidental with that decision.

The Elbow Room policy which had been implemented in other parts of the United States had proven very successful and the background of it was that in 1962 when the decision was made to go step by step in the United States Sylvania was a "me-too" supplier, if you will, in that it had wholesale distribution all over the United States and was one of many competitors following that route.

Q. When you say, sir, wholesale distribution, what do you mean? A. Two step distribution where the supplier sells to a wholesale distributor who in turn sells to a retail operator in his given territory.

Q. Does the wholesaler inventory a supplier's stock? A. The wholesaler inventories the supply of merchandise for his district.

[590] Q. And then a particular dealer, retailer, can draw upon that inventory? A. That is correct.

Q. Would you proceed, sir, to describe the market conditions. A. In that type of distribution you had most of the suppliers in the United States and two were notably successful, RCA and Zenith, and then the Motorola, the Philco, the Admirals, the Olympics, the Sylvanias, General Electric, Westinghouse, etcetera, were actually floundering and Sylvana especially was floundering to a point where the management decided either they had to come up with a more meaningful form of distribution for their product or cease being a supplier of television and stereo.

Q. You mean simply go out of business? A. Go out of that particular part of the business.

Q. Sylvania, of course, manufactures other products? A. Correct.

Q. Like flashbulbs—— A. Light bulbs.

Q. Light bulbs. I'm not sure what else, but that was the issue as you understood it based on your conversations with the manufacturer? A. That is correct.

Q. So prior to 1963 what was Sylvania's policy with [591] respect to selling its products to retailers? Would it sell to anybody who wanted to handle it? A. They weren't selling direct, they were selling through wholesalers. The decision as to who would buy them from the wholesaler was his alone.

Q. So far as you know, did the general wholesalers for Sylvania follow what might be called a saturation type of policy, sell to anybody? A. That's true. And, as I mentioned, very unsuccessfully.

Q. Do you know what Sylvania understood its relative market share—that is to say, the share of the overall television market in the United States was at or about the time it adopted Elbow Room? A. In 1962 I have heard that it was as low as 1½ percent. That was before I came with them.

Q. This would presumably vary from market to market? A. That's true, but that's an average figure, as I remember it.

Q. What was the solution to this marketing problem, if I may call it that, what you understood was adopted by Sylvania? A. The solution was to, in the metropolitan areas, adopt a direct factory franchise type of operation where the wholesale distributor would be eliminated and the factory [592] directly to a select group of dealers who were in a position to take for the consumer take on whatever it was the distributor was supposed to be doing, such as inventorying the merchandise so that it is there for delivery, giving a broad selection of the merchandise to give the consumer a chance to see the cross section, if you will, of selection that Sylvania makes available.

So the requirements, obviously, on a direct factory franchise are much greater than on a saturation type franchise where they buy from a local distributor.

On the other hand, the solution came up by making it possible for this type of a dealer because of the savings inherent in by-passing the wholesale distributor to have a suggested list price, suggested retail price, which was competitive with the discounted price, if you will, of our competitive brands, such as the RCA, Zenith, Admiral, etc., and therefore to get

a fair return for this investment that he is making in a direct factory franchise.

As I mentioned even before I came with the company in 1963 this had proven to be very valuable not only to Sylvania but other dealers who were franchised and working very well and we had become a competitive factor in the New York market, for instance, where they went first with this.

And therefore they felt that rightly that it could be and should be extended so that indeed Sylvania should continue [593] to grow as a competitive factor and be healthy as a supplier, have a healthy family of dealers so that the consumer does have a true competitive opportunity to choose between Sylvania and all of these other manufacturers.

Q. Taking New York as an example, what was the result in terms of the number of dealers by way of implementation of the Elbow Room policy? A. In Northern California?

Q. First, in New York City, where you first tried it? A. I don't have any figures on that, Larry.

Q. All right. Was it part of the Elbow Room policy then to go to a system of select dealers as opposed to dealers with a—— A. That is correct.

Q. Was the effect of this, to your knowledge, a reduction in the number of dealers—— A. Necessarily so, but I don't have the figures. Right.

Q. All right, using Sacramento, which we have a chart which has been supplied by opposing counsel, is it not true that the effect of this type of distribution policy going to selected dealers does produce, in the implementation of the policy, the reduction in the

number of dealers? A. True, because the dealers with a wholesale **[594]** distribution approach, which is also used by the factory branch type operation is that you have dealers who have primarily a service shop with one or two sets, and, of course, they couldn't qualify for a direct factory franchise and give the service that is needed for such a form of distribution.

* * *

Q. One last question on the general range of factors, the general range of history of this program, Mr. Carroll. Did any other TV manufacturer have a similar type of system? A. Yes, in a market survey where Sylvania studied what was going on in the industry to decide whether to get out of the business or stay in it, Magnavox was the only other, really, major factor in the business who used a direct factory **[595]** franchise type of approach.

Q. To your knowledge did Magnavox adopt this system prior to Sylvania's decision to adopt it?

* * *

The Witness: Yes, Magnavox had been doing it for a long time prior to Sylvania's decision.

Q. To your knowledge had Magnavox been successful in marketing its product in this manner? A. Yes, Magnavox has been very successful.

Q. With reference to the factors that Mr. Miller discussed yesterday and with counsel's leave I will must mention those that were discussed: Financial capacity, size of dealer display, dealer attitude and physical proximity.

In implementing the Elbow Room policy, sir, with respect to physical proximity, have there been occasions where Sylvania has in fact put the dealers virtually next door to one another? **[596]** A. Very definitely.

Q. Can you recall such an instance? A. In San Francisco, where we have a big metropolitan area, we had the White House Department Store and Sherman Clay coincidentally and they were on the same block, indeed back to back, building to building.

Q. In implementing the Elbow Room policy and the factors you mentioned that you considered market study and market penetrations. Why did you consider those factors, sir, in making the decision how to implement the policy? A. Well, in the research as to why and how this direct factory franchise works, it was important that the individual dealer who was investing heavily in this type of a franchise, should have an opportunity to get a fair return, and one of the factors he needs for such an opportunity is an unsaturated distribution so that he can indeed get a fair return. And where they have become oversaturated we found that it worked neither to the Sylvania advantage or the dealer advantage.

Q. Market penetration affects both the dealer and Sylvania, then? A. Very definitely.

Q. Counsel asked you about those areas in which Sylvania had adequate penetration in 1965. Are you familiar, **[597]** sir, with the Sylvania penetration figures which were made available to you during the year 1965? A. For Northern California.

Q. For the Northern California area. We have prepared various charts for certain of the counties in Northern California, Your Honor. Mr. Carroll, you have looked at these charts, have you not? A. I have.

Q. To the best of your knowledge do they accurately set forth the industry-Sylvania penetration for the year 1965 by color TV sets, by county in Northern California and Northern California? A. That is correct.

* * *

[598] * * * Q. Mr. Miller asked you on direct—cross examination, Mr. Carroll, several questions about the market share and market penetration, did he not? A. I believe that is correct.

Q. And he asked you questions which elicited various percentages of the market share? A. Yes.

Q. And you gave answers to those questions based on your personal knowledge, did you not? A. Right.

Q. And based on the EIA figures which were made available to you through Sylvania?

* * *

Q. Did you base these answers you gave Mr. Miller in part on the EIA figures given by Sylvania? A. I did. That is my source for that information, no other source.

Q. All right. Could you explain how you received **[599]** the EIA figures? A. They come to us monthly.

It's an industry preparation of all competitors as to what, as to where their sales of color television,

black and white television, console stereo and portable stereo are sold by county.

They are fed into the industry computer and then they are fed back in total figures to each individual supplier without divulging what the other supplier is doing, but giving him a total of what the industry is doing.

Q. And you get Sylvania's percentage, then? A. We get Sylvania's percentage share and the industry total.

Q. All right. Now, quite aside, sir, from the finite accuracy of these figures do you in fact use them in making your market judgments in implementing the Elbow Room? A. We do and it is industry practice, actually.

Q. Now, based, sir, on your personal experience in Northern California over the last eight years working with these figures, do you believe them to be substantially reflective and accurate insofar as they state Sylvania's market share? A. I'm sure they are accurate and substantially useful and a good guide for our business.

[633] * * * Q. Mr. Carroll, to pick up roughly where we were, you have looked at these charts, have you not? A. I have.

Q. And to the best of your knowledge, do they actually reflect the penetration data or market penetration data for colored TV for the year 1965 in various Northern California counties and for Northern California as a whole? **[634]** A. Sylvania's share of the industry.

Mr. Popofsky: Your Honor, we would offer these charts consisting of the county by county penetrations for eight Northern California counties and the total of Northern California.

* * *

The Clerk: Defendant's A and B in evidence.

[Charts marked Defendant's Exhibits A and B received in evidence.]

* * *

Mr. Popofsky: Q. Mr. Carroll, I direct your attention first to the composite for all of Northern California. What does that show? A. That covers my jurisdiction region, if you will, Northern California versus Northern California from Kern County **[635]** north to the Oregon border and including the Northern counties of Nevada.

That by description is the Northern California region. That shows that in the year 1965 Sylvania sold in that region 4.92 percent of what was reported to be sold by the industry.

Our competitors, obviously, RCA, Zenith, Magnavox, etc. sold 95.8 together.

Q. Now, turning to specific counties for the year 1965, could you just give the Sylvania county total by county. A. Sacramento County, Sylvania 13.39 percent of industry; Marin County, Sylvania 7.67 percent of industry; and San Francisco County, Sylvania 2.51 percent of industry; Contra Costa County, Sylvania .84 percent of industry.

[Continued on next page. Nothing omitted.]

[636] Q. That's less than one percent? A. That's correct.

* * *

The Witness: Alameda County, Sylvania 4.03 percent of industry; San Mateo County, 6.98 percent of industry; Santa Clara County, 7.05 percent of industry; Monterey County practically nothing.

Q. .07. A. .07 percent of industry.

Q. All right. Now, Mr. Miller brought out in his questioning about these charts that these charts depict the locations at which the merchandise is received by the customer, is that not so? A. Right. The EIA figures from which these charts are made come to us on a monthly basis from the trade association known as Electronic Industry Association.

Q. Would you have to, in using these charts, adjust them for any branch operations that might exist in these specific counties? A. We don't use those charts and adjust them, but we have, of course, our own personal knowledge of the branch operations and in our counsel between District Manager and Regional Manager these factors are taken into consideration in our decisions.

[637] Q. All right. For example, in Monterey County, which is where Salinas is located? A. Correct.

Q. Is that correct? Mr. Shahood and Continental TV had a branch, an affiliate operating in Salinas, did they not? A. That's correct.

Q. Now, where, in these county by county figures would the merchandise that was sold in Salinas show up, to the best of your knowledge? A. It would show up in Santa Clara County

Q. In Santa Clara County. Without exception, what branches are these figures, so far as you are aware, substantially reflective of Sylvania's actual

market penetration? A. Well, as I have said, over the years since I have been in the television end of this business, which is since 1964, we have always used the Electronic Industry figures as a guide for our distribution with, as I mentioned earlier, the additional input of the District Managers, whether it was a wholesale distributor or direct factory, as to the branch operations.

These are the best figures that this industry has for use and it is a true guide for us, continuing.

Q. Do you have any reason to believe that any particular **[638]** manufacturer would falsify its input into these figures? A. I think prima facially is that there is no benefit in falsifying. To the contrary, it just isn't logical for anyone to falsify.

Q. You know personally the relevant market share of RCA, Zenith, Admiral, G.E or any of the others? A. Only from reports that come in the trade journals, like Home Furnishing Daily.

Q. You don't have EIA figures which would break out—— A. That's why there would be no benefit in falsifying. The EIA will not report such figures, that is part of the assurance of accuracy, that there is no benefit for falsifying.

Q. Now, with respect to the use of these market penetration figures you told us yesterday that you used them as a tool in making the Elbow Room decisions. A. Correct.

Q. How would you use them in the ordinary course in implementing Elbow Room? A. Basically we are given quotas, as has been established, and our aim, of course, is to grow profitably both for our channels

of distribution, our retailers and ourselves, and our experience has been that where we do not overload a given trading area with dealers that dealer prospers and does **[639]** a better job for himself, for us and for the consumer in our type of a franchise.

So where our trading areas are giving us better than our average performance as a region, and those are the figures I really work with, even more so than the national average, going back to that initial chart which showed that my region did 4 percent plus in 1965, where we do a better than that regional average, well, then, we counsel our District Manager to spend his time for prospecting of new accounts in the area where we are doing less than average to bring them up, because there is a larger percentage of that particular market that is available to us, reasonably speaking, based on the merchandising plans of Sylvania versus all the other competition.

Q. In 1965 how did Sacramento County, how did you personally evaluate Sacramento County using the criteria you just described? A. Well, it was clearly better than three times our regional average.

Q. How did you evaluate San Francisco County? A. Even with the branches put in it was well below our regional average.

Q. Now, sir, in considering the various factors which counsel discussed with you yesterday in considering the market penetration figures, who made the decision on whether or not **[640]** to franchise a dealer in implementing the Elbow Room policy? A. It was a joint decision. The final word should be and was with the District Sales Manager.

Q. That is the Sylvania District Sales Manager? A. Sylvania District Sales Manager.

Q. All right. Did any existing Sylvania dealer participate in the decision making process? A. Negative.

Q. Did they have a right to say no to any decision? A. Negative.

Q. Did any representative of the John P. Maguire & Co. participate in any of the decisions concerning the Elbow Room policy? A. Nothing to do with it.

Q. Did you ever talk to any of the Maguire people about whether or not to franchise a dealer? A. Negative. I did not.

Q. Incidentally, in connection with Maguire, that was the Sylvania financing plan which was offered, was it not, to the various dealers if they so chose? A. It was a Sylvania what?

Q. Finance plan which was offered to dealers if they elected to use it? A. Correct.

[641] Q. In 1965 approximately how many of your dealers in your general area expressed as a percentage, as best you can recall, elected to use the Maguire plan? A. Well under 50 percent of our business was done with the Maguire Company.

Q. What other kinds of financing arrangements could a specific dealer utilize, if he desired? A. Well, we were then and still do, use bank flooring, Bank of America, Crocker Citizens had a flooring plan. There are other finance companies who have flooring plans. Any local finance company was accepted by Sylvania credit department, and there were numerous.

Q. Now, with respect to the decision to franchise a particular location, did you outline to a specific dealer as part of your ordinary sales presentation the elements of the Elbow Room policy? A. Definitely.

Q. Was it part of your instructions to your salesmen of any part of the Elbow Room plan to extract a promise from the dealer that he would not remove his merchandise from an authorized location to some other unauthorized location? A. A promise? To the contrary.

Q. A promise or—— A. No promise.

Q. No promise. **[642]** So far as you know, was he free to do so if he wanted to move the merchandise that he owned to some other location? A. As far as I know he was free to do so.

Q. Was he free to open up a new corporation somewhere else if he wanted it so far as you know? Or to open up a branch of the same corporation? A. Correct.

Q. But it was your policy that he was authorized by Sylvania only to sell from a designated location, is that correct? A. That is correct.

Q. Did you hope he understood your policy? A. We tried to persuade them to understand it.

Q. You hoped he would honor your policy? A. Actually found it again, going on the record we found it successful for him to do that and for us mutually, it was the way we were growing.

Q. In fact, Sylvania as a competitor in the marketplace, grew, did it not, from 1962 to 1965 through utilization of the Elbow Room policy? A. Yes. I'm

sure the record will show it grew successfully, substantially.

Q. Reaching, at least in Northern California, almost 5 percent of the color TV market? [643] A. Correct.

Q. And what is it, incidentally, in 1970? A. 1970, Northern California's current going rate for the first six months is six and a half percent.

Q. Are you still marketing your products through the Elbow Room philosophy? A. We surely are.

Q. You are fair trading your merchandise, however, so far as price is concerned? A. That is correct.

Q. With the exception of the fair trade practice, are there any other changes in the basic outline of Sylvania's Elbow Room policy in 1970? A. The basic outline remains substantially the same.

Q. While we are on this subject of the results, I show you, Mr. Carroll, a map which we have prepared which purports to show Sylvania's franchise dealer locations in Northern California in the calendar year 1965, ask you if you have looked at that map? A. I have.

Q. This map contains various red dots for franchise locations other than Continental and its affiliates and blue dots for Continental and affiliates. Is this map substantially accurate so far as you know, Mr. Carroll, for the calendar year 1965? [644] A. Yes, it is.

Q. Does it purport to show those locations which were at some time or other during 1965 in fact franchised? A. That is correct.

Q. By location.

Mr. Popofsky: We will offer this map, Your Honor, as Defendant's next in order, Number 70.

* * *

The Clerk: Defendant's 70 introduced and admitted in evidence.

[Map marked Defendant's Exhibit 70 and received in evidence.]

Mr. Popofsky: Now, there has been a lot of questions that have been put to you, Mr. Carroll, about territories and I think there have been territories defined for Mr. French, Mr. Hines, Mr. Hallday and even for you. Are these Sylvania territories?

The Witness: Wholly. Obviously there are no walls between counties and so Sylvania's marketing plan is to give the responsibility for geographic areas within which, as we have testified, there is a sufficient potential for our limited share of this total television business for an individual District Sales manager to get a fair return on his investment of time and effort as our employee.

[645] Q. Is there any restriction on a particular dealer as to where he might sell his products? A. None.

Q. Let's take the Peninsula area which shows a range of 9 or 10 authorized Sylvania dealers ranging down the Peninsula within approximately 20 miles. Were there any restrictions in Elbow Room policy as to what customers they might sell? A. None.

Q. Or where they might try to sell their product? A. None at all.

Q. Or categories of customers who come that they might sell? A. None.

Q. And is it likewise true up in Sacramento? A. That is true everywhere.

Q. Where there are three in the city and county but other dealers in the general environs. A. True.

Q. Mr. Carroll, is it the practice under the Elbow Room policy, if I may use the language which caused you pause yesterday, to eliminate same brand competition? A. Definitely not to eliminate same brand competition.

Q. Why did that language in the Sylvania sales manual cause you concern yesterday? **[646]** A. Well, basically it didn't have a qualification in that particular sales manual that is given to us in our orientation and that we use in practice and that qualification is to eliminate same brand cutthroat competition which eliminates the possibility of a fair return. A combination of competition, Sylvania competition is always there so that someplace a dealer—a consumer, in fact, can have a choice as to where he buys. Now, that is not true in the sticks where there are so many miles—up in Weed, for instance, I'm sure they only had one dealer and I'm sure anybody in Weed who wanted a television set were going to have to go to that dealer, because there are probably only two television dealers in that town. But in the metropolitan areas we are anxious to have and do have, indeed, where we are successful, a choice of dealers to whom the consumer can go.

Q. As part of the Elbow Room policy was it always possible for you to authorize a new dealer to go into any area? A. Yes.

Q. For example, take Salinas. In Salinas you only had one dealer, is that correct? A. It was still possible for us to franchise another.

Q. And that one dealer was Continental TV, an affiliate of Continental TV? **[647]** A. That is right.

Q. Now, so far as you know, Continental TV was not given an exclusive in Salinas, was it? A. That's true, we did not give an exclusive.

Q. You're familiar with the practice of major American industries in distributing their products to give an exclusive? A. Yes sir.

Q. Can you describe for us, sir, the basic difference between the Elbow Room policy, as you understand it, and the practice of giving exclusives? A. Well, in our Elbow Room franchising policy we definitely don't give exclusives for the reason that if it is in Sylvania's interest and, if you will, in the dealer's interest and in the consumer's interest in a given marketplace for another dealer to be franchised, then that's a unilateral decision that we want to reserve the right to make and we do reserve the right to make that decision.

Q. Mr. Miller yesterday put a hypothetical situation to you yesterday about an exclusive. I think he hypothesized an exclusive up in Sacramento and he suggested the possibility that that exclusive might charge $75 more than the suggested price. Do you recall that? A. Yes, I do.

[Continued on next page. Nothing omitted.]

[648] Q. Is there, so far as you know, any situation in the United States where Sylvania has promised that it would not put another dealer into an area

if the dealer tried that kind of pricing? A. Not so far as I know, and definitely not in Northern California.

Q. Incidentally, do you know what Continental's pricing policies were in 1965? A. Well, as was indicated in yesterday's testimony, Continental's policies were very promotional, and his pricing policies were higher than suggested retail, which in his judgment was very successful and gave what he called services beyond just the product.

Q. But their practice was, for example, in Salinas to charge higher than Sylvania's suggested price? A. That is correct.

Q. Did, for example, Sylvania in Salinas where only one Sylvania dealer existed, Continental, if the prices went too high, for example, to put on another dealer? A. We never articulated that if the prices went too high we would put on another dealer. I would just respond to that, counsellor, that we always reserve the right to put on another dealer.

Q. In the major metropolitan areas there were, so far as you know, always more than one, is that not so? **[649]** A. Definitely.

Q. With respect to the subject of price, Mr. Carroll, was it Sylvania's practice, to your knowledge, to enter into any agreement with a dealer that that dealer would charge a specified minimum price? A. In 1965?

Q. In 1965. A. Negative.

Q. What was Sylvania's practice in that regard? A. Sylvania's practice was to print and make avail-

able to, and be sure each dealer had a suggested retail price for each of our models. And that price was set or arrived at by the competitive pressures of all of our competition a la Zenith, RCA, Admiral, et cetera. And within the framework of that we found from our market surveys that if the dealer would sell at our suggested retail prices he would, number one, compete very successfully against the many brands that are competing with us. Number two, he would make a fair return on his investment in Sylvania.

Q. Now you issued the suggested price sheets, did you not, to your dealers? A. We did.

Q. Did you hope that they would follow these **[650]** suggestions? A. Indeed we did, and we tried to persuade them to do that for the reason we just mentioned.

Q. Counsel used the word in asking you about this subject yesterday "induced." What kind of induction or inducement to your knowledge did Sylvania use—— A. I don't know what Webster's says induced means, so all I can say is that the positive persuasion approach that it is in the dealer's best interest to get a fair return on his investment with our method of trying to get each dealer to sell at our suggested prices.

Q. Were there instances where dealers in fact sold below the suggestions? A. I'm sure there were.

Q. Did Sylvania from time to time continue to do business with such dealers? A. We did.

Q. Mr. Carroll, in your judgment was the elbow room policy as you saw it, and as you implemented it

from 1963 to 1965, successful in the marketing of the Sylvania product? A. To a very definite degree. We have come to a point where we are recognized now as a true competitor in the industry, whereas in 1963, **[651]** most people that I called on in the trade, the dealers said, "Oh, I thought you were out of business." There is just no question today that Sylvania is one of the major competitors, certainly one of the five major competitors in the television business in Northern California.

Q. There are still much larger companies in terms of market share, are there not? A. Oh, yes. Obviously with only six and a half percent of the market, we are, I would say, probably in fifth place.

Q. Has the elbow room marketing philosophy contributed to that? A. I'd say it is one of the primary factors in that success.

Q. What has been the general effect, to your knowledge, on dealers? A. Well, the beautiful thing is those dealers who are part of our franchised family as pictured on that map have prospered with us and they have grown from uncompetitive dealers, as well as we have grown from an uncompetitive supplier to a factor in each marketplace serving the customers.

Q. I take it there are exceptions to that as well? A. Oh, definitely.

Q. With reference to the Sacramento market in **[652]** particular, Mr. Carroll, I am assuming that this chart included some addition for the Sherman and Clay branch; what has been the effect of the elbow room policy in the general Sacramento County area?

A. Well, the effect has been that where in 1962, the records that were given to me as I came into the Sylvania family showed Sacramento to have about the national average share market wise. It has grown to a place where we are now, I would say, probably in third place in Sacramento in share of market in the industry of 12—in the industry of over 10 certainly suppliers.

* * *

[656] * * * Q. Mr. Carroll, do you recall a Sylvania franchise dealer in San Francisco by the name of Young Bros.? A. A Sylvania franchised dealer?

Q. Let's start with a dealer named Young Bros. A. Yes, we do know Young Bros.

Q. When, sir, did the question of Sylvania franchising **[657]** Young Bros. first come up? A. I'd say that he was approached first by Jay Hallday in 1964, when Jay first came to work for us, replacing myself. I approached Young Bros. early in the Sylvania experience which I had, probably in the fall of '63, and they were not interested. But they were certainly approached by me in '63. That would be the first efforts.

Q. Bring your mind, if you would, sir, to the spring of 1965. Did you attempt to solicit Young Bros. at that time for a Sylvania franchise? A. Yes. Jay Hallday brought them to a point of interest in which Dave Young and his sales manager came out to see some of the merchandise that we had in our Burlingame office and two, away from the hustle and bustle of his store, review our elbow room philos-

ophy, if you will, and our advertising policies which are written, and to see whether indeed it would be mutually advantageous to consider a franchise for Young Bros., or for Young Bros. to consider Sylvania.

Q. Do you recall when this occurred, approximately? A. I couldn't put a month on it. It was certainly before the June convention.

[658] Q. Did you have occasion to discuss the possibility of franchising Young Bros. with Mr. Shahood? A. Well, discussed the possibility—I am a semanticist, as you say. I would have to say that I in effect don't discuss those possibilities with any of my dealers and didn't at that time. Mr. Shahood brought it up and indicated to me that as far as he was concerned Young Bros. would not be a compatible dealer. Now, I told him at that time that this is something that we do not discuss. We don't allow our dealers to tell us and we don't collude with our dealers about whom we should sell. And we don't ask—we don't tell the dealers who they should buy from. So it is a mutual thing. So any discussion on that—I asked Mr. Shahood to defer, because it actually puts me in an embarrassing position in considering another account to have one account tell me: "If you put him on I am not going to handle your merchandise," which Mr. Shahood did.

Q. Did Mr. Shahood say that? A. He said that about his San Francisco operation. He said: "If you were to put Young Bros. on, I would not sell Sylvania in San Francisco."

Q. Was this prior to the June, 1965 show in Chicago? [659] A. Yes.

Q. Do you recall approximately when? A. Well, I recall that it was more than once, and each time I tried to get him to stop discussing it that way; and that it wasn't reasonable for him to take such a position, but I couldn't tell you exactly when, no.

Q. Did Mr. Shahood express any reasons why he objected, if I may use that description, to Young Bros.? A. Again, as I remember it, it was because of his experience as a neighboring dealer when he had the Munn's Franchise on Mission Street. Again, this is my memory of it; that he personally did not want to do business with a supplier who did business with Young Bros.—a personal reaction.

Q. That's what Mr. Shahood conveyed to you at least? A. That's my memory of it.

Q. All right. Now, sir, was Young Bros. invited to the Chicago show? A. Negative. We only invite prospects whom we have decided definitely we want to sell.

Q. Had such a decision been made with respect to Young Bros. prior to the June, 1965 convention? A. Negative.

[660] Q. Mr. Shahood was invited, was he not? A. Very definitely.

Q. And Mr. Shahood was present, along with other dealers, at the Chicago convention? A. Correct.

Q. Can you describe for us, sir, the circumstances which led up to Mr. Shahood signing initially a quarter of a million dollar order for Sylvania merchandise? A. At that convention?

Q. At that convention. A. Well, yes. Basically the convention is a presentation of our new models

for the next year, so that would have been the 1966 line. They are presented to the group of key dealers who are invited and distributors. And following that they are then put on display in a complete display area, and the district sales manager who covers—this would have been Lee French and George Shahood, who cover the individual dealer, takes that individual dealer, after they have been presented from the platform with the whole program, advertising, merchandising, the support program for their efforts and the merchandise, and then the final thing is that the dealer looks at the merchandise and touches it and gets the feel from his experience which models will sell best in his market. And he counsels with our district sales manager, projects the **[661]** amount of business within the framework of that business available to him, starting as a platform the business he did, and the prospects of the industry as to how much business is going to be done, and then his share of it—we like to project roughly 20, 25 percent of the year's business on that order.

Q. All right. Now this process was gone into with Mr. Shahood? A. I'm sure Mr. French and Mr. Shahood used those evaluating facts.

Q. Did Mr. French say anything to you about Young Bros. and Mr. Shahood? A. Yes. Prior to Mr. Shahood and Mr. French going through—prior to Mr. Shahood coming in or any of the dealers coming in, the factory has a meeting with its district sales managers, the field sales force, including myself, and gives them their program for the year and gives

us our quotas for the rest of the year and what is expected of us. That, of course, is broken down county by county, district by district really; and then the district manager has to break it down within his own district as to where he is going to pick up this volume of business to make his quota. And when the quotas were given and Mr. Hallday's **[662]** share of our regional quota was given, it was obvious that we did have to enlarge, if possible, we had to make the effort to enlarge our sales in San Francisco County, which is such a big part of our marketplace. Unit wise I think your chart will show what the industry sells to dealers in San Francisco County—1965, 16,739 units. That was a big share of the business done in Mr. Hallday's district. So we did definitely decide to try to get Young Bros. to become a dealer. And at that point obviously, since Mr. Shahood has made the comment he has, we had to tell Lee French that this decision was made; and with my supervisor, Ray Steiner, to try to get Young Bros. to become a dealer; and we were going to, when we had our local show, invite Young Bros. in.

Q. Was this communicated, this decision, to Mr. French? A. Mr. French said that in all fairness to Mr. Shahood, you know how volatile he is and how strongly he feels about this—I'd like to have him evaluate what Sylvania has to offer for the fall before this, if you will, disturbing information is given to him. I said only on the basis that we would do, as we have promised to do when Mr. Shahood told me he would not do business with us if we put on Young

Bros.—I said, well you [663] will know about it before we put him on, but you are certainly not going to keep us from putting him on. So we demurred to Mr. French's judgment that Mr. Shahood should be given the right, indeed, to see what it was he was evaluating if he decided to go ahead with his feeling and his promise to eliminate Sylvania. We wanted him to know what he was eliminating, and so we did not tell Mr. Shahood until after he had seen the whole presentation and had decided how much he would project, which was a quarter of a million dollars.

(Continued on next page).

[664] Q. Now, did you meet with Mr. Shahood after he had—— A. Once that was done.

Q. —written up the order? A. Mr. French and I asked Mr. Shahood to come up to my suite in the hotel where we were having this meeting so that we could tell him indeed that before he placed this order and before it became an order in fact that we had decided to put on Young Brothers. At that point—and he is a very volatile man, he lost his temper. But as I remember, the first thing he said was "Well, at least I got to hand it to you. You said you would tell me and you did." From that point on, Mr. Shahood from that day to yesterday, has not talked to me. So I gather that he really felt very strongly about it. He definitely told Lee French in my presence to cancel the order that he had written.

Q. Did he—— A. And said to me "You have just made me the biggest Philco dealer in the United States." And he was on his way to the Philco con-

vention and we knew he had a Philco store in Sacramento. That was no surprise. But his decision was evidently made up to cut back on Sylvania and emphasize Philco.

Q. That is your understanding of the words that you [665] just testified Mr. Shahood said? A. That is correct.

Q. Now, sir, Mr. Shahood was doing a substantial volume of sales with Sylvania at the time this decision was made, was he not? A. That is correct.

Q. Why did you make the decision to try and franchise Young Brothers when it endangered the relationship with Mr. Shahood? A. Well, our whole philosophy of distribution is based on conviction, if you will. As a matter of fact, I think I have a evangelical fervor for the fact that compatible distribution in a large metropolitan market is desirable and is good and must be a part of our distribution policy. One of the factors that made it important to me to put on Young Brothers, in addition to the figures which we have already gone over, is that we had to have more distribution in San Francisco County. And then too with Mr. Shahood telling me not to put it on, it would be a factor which is certainly if there were some kind of a case—if Young Brothers were not put on and they were to come to the course and we were not put on because Continental TV told Sylvania not to put them on, that certainly is illegal.

[666] Q. Anyway, that is why you were worried about it? A. I was told that was certainly not a situation to get into.

Q. What were the factors as far as the Elbow Room policy is concerned which you considered in making the decision or participating in the decision to offer Young Brothers a franchise? A. Well, the factors, number one, Young Brothers was the largest individual retailer of television in San Francisco county. So it certainly qualified from a size standpoint. His location in the heart of Mission Street was a place where we wanted to have coverage so that consumers could get the merchandise. I believe Redlicks had indicated they were out of our picture by that point. Redlicks was another Mission Street dealer. The preliminary credit investigation by our credit department, which is a normal procedure for prospects indicated that they could indeed give Young Brothers the kind of credit clearance that would make it possible for us to do business, and the Young Brothers attitude in a preliminary discussion with Jay Hallday and myself was such that we felt they were growth oriented, too.

Q. Did you consider the Young Brothers Geary Street store as being in the same trade area with the Geary Street **[667]** of Continental? A. Plus it is in the same county. But my feeling was that Continental TV's store on Geary Street was actually in a automobile area, not in the, if you will, shopping trade area, and Continental TV's approach to the market was rather than people coming into the store, the biggest share of their business, according to what Mr. Shahood told me, was being done by the outside salesmen who went to the consumer's home and sold

them in the home. Therefore, the type of customers who were coming into the stores and shopping would not be the same on a large percentage basis between Geary Street Young Brothers and Geary Street Continental. So there would not be too much conflict. To the contrary, this would be additional opportunity for Sylvania sales to be made and for consumers to see and buy Sylvania.

Q. Did you hope that Mr. Shahood and Continental TV would continue to do business notwithstanding the decision? A. I certainly did. That was my firm desire.

Q. Incidentally, as part of the Elbow Room policy, as I understand it, did Mr. Shahood have the right to cease doing business with Sylvania if he didn't like your decision to put on Young Brothers? A. Very definitely.

Q. Did he have the right, as far as you knew, to tell **[668]** you that if you put Young Brothers on in San Francisco "I am going to pull out of San Francisco"? A. That is his privilege.

Q. His privilege as far as you know? A. We would do nothing, sir, to circumvent that privilege. If that is a good word.

Q. You said you had not had a personal dealing with Mr. Shahood in the ensuing five years? A. It was not my choice. When we came back from the June convention, Mr. French informed me, I understood from Mr. French at Mr. Shahood's request, that I would not be welcome in any of his stores and that he had instructed his employees that if I were to come

in I should be asked to leave. In that kind of a situation where our experience with Mr. Shahood was such that I recognized that he appreciated respect for his opinions and such, I wanted Mr. French to try to bring him around to the position where he would again be interested in being a strong Sylvania compatible Elbow Room dealer. So I stayed away.

Q. As far as you know, did Continental TV continue to sell Sylvania products in San Francisco? A. It was my information that he did not. I had every reason to believe, since he said he wouldn't, and we **[669]** did franchise at that later date in July, as a matter of fact, we did franchise Young Brothers. I think we signed them up at the end of June and the first shipments were in July. Mr. Shahood is a man of his word, so I imagine he pulled Sylvania out of San Francisco. But I didn't go in to see him personally because I was invited to stay out.

* * *

[685] * * * Q. Now, in 1964-1965, Mr. Carroll, how many dealers did you have in San Francisco who were selling in volume to consumers located in Sacramento? A. In volume?

Q. Yes sir. A. Wasn't any.

Q. What? A. Wouldn't have been any.

Q. How many such dealers did you have in San Jose—— A. Selling in volume—complete the question, please. How many dealers did we have in San Jose?

Q. How many dealers did you have in San Jose, Mr. Carroll—— A. I believe——

Q. Wait a minute. A. Oh.

Q. ——selling in volume from their locations in San Jose to consumers located in Sacramento? A. There wouldn't have been any.

Q. Would your answer be the same if I asked about dealers selling in volume from Oakland? A. Certainly.

Q. Sir? **[686]** A. Certainly.

Q. Berkeley? A. Correct.

Q. Vallejo? A. That's correct.

Q. As a matter of fact, Mr. Carroll, as a man with some years experience in this industry, is it not true that this is simply not economically practical for a dealer located more than 25 or 35 miles away from his market to sell and service television products to that market? A. There are successful dealers that go as far as 50 miles. I would say the average dealer does the majority of his business within 30 miles.

Q. Right. A. Radius of his market.

Q. And that's a pretty well known fact in the industry, is it not? A. I would say so.

* * *

Testimony of Calvin Savage

[749] * * * Q. Sometime after the Chicago convention in June of 1965, did you have personal knowledge as to the possibility that Continental would enter the Sacramento market? A. Yes, I had some knowledge of it.

Q. When did you first hear about that? A. I believe the first that I heard about it was, I guess, right after the return from the June convention.

Q. And who did you hear this from? A. From Mr. Shahood.

Q. Now, did Mr. French continue to call on the Continental chain of stores after this June convention? A. Yes, he did.

Q. Was he calling on the chain as frequently as he had prior to the convention? A. No, I don't think so. There just seemed to be a little bit of coldness or a little bit of gradual getting away, you know, the visits were less frequent.

Q. Did you ever talk to Mr. French after June of 1965 on any of these visits that he did make to Stevens Creek? **[750]** A. Yes, I did.

Q. And on these occasions did the subject of Sacramento ever arise in your discussions with Mr. French? A. It certainly did.

Q. I'd like to focus if I can on August of 1965, and ask you if Mr. French was ever at the Stevens Creek store to your knowledge during that month? A. During August, 1965?

Q. Yes. A. Yes.

Q. Do you recall any discussions with Mr. French during August of 1965? A. Well, I had some personal conversations with him as well as some of the other employees.

Q. Well, prior to that month did you say you had some discussions with French concerning the subject of Sacramento? A. Yes.

Q. Would you tell me about that? A. Well, the conversations were around the fact that following the June convention, why, there just seemed to be a subject matter just about everytime that Mr. French came to the store.

Q. What was that, sir? A. About the possibility that we were going to open **[751]** a branch location in the Sacramento area and in Sacramento.

Q. What was Mr. French's reaction as far as you could describe it to us? A. I would say he was a little bit disturbed about it.

Q. Did he say anything that would indicate why he was disturbed? A. Well, at first he just said, you know, "I don't think that this—I don't think that we should—Mr. Shahood should do this, you know, without first getting approval from Sylvania before he goes in there; that he would have to get some approval."

Q. Mr. French told you that? A. Yes.

Q. And did you have this type of discussion with him more than one time? A. Oh, yes.

Q. Would you say it was a frequent subject of discussion during the summer? A. All through the summer, all through his visits there, yes.

Q. I'd like to focus your attention on the month of August, 1965. You have indicated that you had some personal discussions with Mr. French, is that correct? **[752]** A. Yes, that's right.

Q. Where did these discussions take place? A. In the office and their location at Stevens Creek Boulevard in Santa Clara.

Q. Would you tell us about those discussions, please? A. Yes. I recall in one of the conversations

that I had with him personally was that Mr. French said to me, he said,

"Isn't there anything that you fellows can do to convince George, Mr. Shahood, to think twice before he makes this move. After all we don't want to disturb a good relationship.

"We have got a good account here and we don't want to jeopardize the relationship.

"And certainly if you go into Sacramento you are going to disturb this relationship."

Q. Did he tell this to other employees of Continental besides yourself on this occasion? A. Yes, that's right.

Q. Now, did he say anything to indicate to you why the relationship would be jeopardized if Continental went ahead into Sacramento? A. Yes. He did mention, he said that, you know, Sylvania already has an established dealer in the Sacramento **[753]** area there.

Q. Did he mention that dealer's name? A. Handy Andy.

Q. He mentioned Handy Andy? A. Yes. Right.

Q. Did he say anything else about Handy Andy? A. He indicated that he was getting some pressure from his people, Sylvania, to try to prevail on us not to go in there, because apparently Handy Andy was complaining to someone in a higher position back in Batavia and he was getting heat back from Batavia about it.

Q. Mr. French told you that? A. Yes.

* * *

[755] * * * Q. Mr. Savage, have you related to us everything you now can recall about what Mr. French told you about the subject of Sacramento in the month of August, 1965? A. Yes.

Q. Did you have any other further discussions with Mr. French about that subject in September of 1965? A. I recall one particular conversation I had with Mr. French.

Q. Where did that conversation take place? A. At my home.

Q. Were you and Mr. French socially friends at that time? A. I believe that was about the only time that I had met him away from Continental T.V. He was a guest in my home at that particular time.

Q. Okay. Can you to the best of your recollection tell us when in September, 1965 this conversation took place at your home? A. Right around Labor Day.

Q. Labor Day weekend? A. Yes.

Q. Okay. **[756]** Mr. French was there, you were there, were your wives there? A. Yes.

Q. What did Mr. French tell you on that occasion? A. Well, basically discussed again the general subjects that we had talked about before, about business, about going to Sacramento, specifically said to me, you know, he says, "You are really foolish to stick around here with Continental T.V. any longer."

He says, "You know, if they pursue this any further with the idea of going to Sacramento you might just be out of a job." He says, "In fact, all of you will be out of a job." He says, "There won't be any more Continental T.V."

Q. Who was he referring to when he said all of you may be out of a job? A. The other employees of the company.

Q. What was the last part of what he said? A. He said that we might all be out of a job and there wouldn't be any more Continental T.V.

Q. French told you that? A. Yes.

Q. What was your attitude at that time? A. I got damn worried about it, I tell you.

[757] Q. French tell you anything else? A. Yes. He said, you know, "I have known you for the period of time that you have worked here and my personal experience with you," he says, "Your education, your background and I know your work habits," he says, I wouldn't have any problem at all in getting another job. In fact, he says, "I could probably aid and assist you in getting another job and I won't have any problem in getting one for you."

Q. What was your response to that at that time? A. Well, like I said, I was considerably alarmed about it. I said, "Well, you really think"—"You have got me worried now. What can we do about it?"

Q. What did Mr.French respond to that? A. He said, "Well, if you really"—he says, "I will make an appointment for you to look for another job," and he says, "I have got one in mind and I will make an appointment for you if you are interested." I said, "Certainly I am interested in it. I am concerned right now."

Q. All right. At that time did he tell you who he was going to call about a job for you? A. Yes. He

said he was going to set up an appointment for me to go to see the people down at Alco-Paramount.

[758] Q. In San Jose? A. Yes. In San Jose.

Q. To your knowledge, were they competitors of Continental T.V. at that time? A. Yes, they were.

Q. Do you have any knowledge as to whether or not Mr. French carried through about making an appointment for you to see somebody at Alco-Paramount? A. In fact, he did make an appointment for me to go see someone at Alco-Paramount.

Q. How do you know that? A. He called me and told me he had arranged for me to meet with the people at Alco-Paramount about a job.

Q. Did he make an appointment with any specific person at Alco-Paramount for you? A. Yes. Al Lembaratis.

Q. Now, to your knowledge, who was Mr. Lembaratis at that time? A. At that time I don't know what his position was, but I later learned that he was one of the owners of the company.

Q. Did you keep your appointment with Mr. Lembaratis? A. I attempted to keep the appointment. I went down to see him at the appointed time and he was not **[759]** in his office and I never got together with him.

* * *

[782] * * * Q. First I will direct your attention to plaintiff's 66. That is the photocopy of the actual check, is it not, that was sent to John D. Maguire Co.? A. Yes.

[Continued on next page; nothing omitted.]

[783] Mr. Popofsky: Q. The total sum of $60,123.44, September 3, 1965, a Friday? A. Right.

Q. Now, this is the skirt that you have made your entries on, is it not? A. Yes, that's correct.

Q. I think we can take judicial notice—I have a perpetual calendar with me—1965, the Friday next preceding is August 20. A. August 20—I don't know.

Q. Two Fridays next preceding is August 20. Is it not a fact, sir, that any set which is actually sold prior to August 21, 1965, as shown by your own study and which is included on this September 3, 1965 check, would be outside the terms of that agreement with Mr. Lockard? A. It would appear as such.

Q. My notes show 30 of the 45 items bear dates preceding August 21, 1965, Mr. Savage. Would you please review that and see if that would appear to be correct. A. That appears to be correct, yes.

Q. There is one here of 7-24-65. That's July 24, '65, is that not correct? A. Yes, that's right.

[784] Q. Would you not agree with me, sir, just by looking at your own analysis that at least on the September 3rd, 1965 payment that Continental T.V. was not complying with the terms of the SAU agreement? A. There may be some circumstances why a check was not produced prior to September 3rd.

Q. Well, you produced one the preceding Friday, did you not? You have it before you. A. Well, without—I don't have any specific reference back. Well, you pinpointed one item, 7-24-65. This may be or may not be an item which was pending credit from one of our branch stores for which the paper work

did not clear through our office and inventory was not released and the papers processed through the home office before this time.

Q. I thought you just got through telling me that the date sold that you entered on here was the date the set was ready to be released to the consumer. A. It could be that that set was set in the customer's home pending credit approval, which subsequently the credit may not have been approved.

Q. But it was sold, it was out in the customer's hands and it was unpaid for? [785] A. It was off our floor.

Q. You would understand that to be a variation, if not a violation of the understanding with Mr. Lockard, would you not? A. Very remotely.

Q. It is a fact, is it not, that of the 45 items being paid for on September 3, fully 30 are outside the terms of the agreement? A. It would appear.

Q. It would appear to be. I'd like to just direct your attention, if I might, sir, to the check in August. If you look at August 4, please, it is Exhibit 61 and 61-a. They are very similar. It is a check and the schedule with your work papers. Do you have it before you, sir? A. Yes, I do.

Q. Now, the check shows a total of $8,187.40 being transmitted to Maguire, does it not? A. Yes, that's right. The check is $8,187.40.

Q. I'd like you to look at the schedules. There would appear to be 30 items, 20 past the maximum of 13 days provided for by the agreement with Mr.

Lockard. Would you just scan the dates, sir. A. On which schedule, sir? I have 61-A and B.

[786] Q. Try B in particular. A. All right. I recall this particular group of T.V. sets here, namely, 19 P16WH, and these items have a subsequent date, as I have indicated here, date sold reflects the date of sale in May and June of 1965, whereas the check was not prepared until August 4th, 1965. This particular group——

Q. Excuse me. That's some 66 days beyond the terms of your agreement? A. Right. This particular group of television sets is only one of a group of items which was under one of our points of discussion of the discrepancy on the statement for the fact that this was a statement of TV's transshipped to us from another dealer on instruction from Sylvania to us which, as Sylvania and J. P. Maguire have acknowledged, the original documents and papers were lost. And we asked for these documents. We could not pay for them until such time as we had the IBM cards and a trust receipt and an invoice. And upon their discovery that apparently these papers were lost, they produced duplicates and sent them in to us, at such time which we paid for these items. Naturally, they are going to show up here at some 60 days later.

Q. After they have been sold? **[787]** A. After the date they were sold, that's right.

Q. You did mention the first two items. They are not in that class, whatever the situation with that class. They appear to be 15 and 18 days late. A. As you also recall, or as indicated on here from my own

card, card number 4734 SF and 4740 SF is indicative of this particular—these particular items here were located in our San Francisco store operation. And for the lag time of getting the credit approved through finance and the further transmittal of the paper work to Santa Clara would probably account for the time.

Q. But you did tell us as to those two sets that the date sold was the date after the actual sale to the consumer, so these are outside the terms of your agreement with Mr. Lockard, whatever the explanation? A. Yes.

Q. And if you turn to attachment A on August 4 you will find three from San Francisco which are all out of time, and you will find three, the initial three which are not in that class.

Mr. Popofsky: We move the admission into evidece of all of these checks with the supporting attachments.

* * *

(Exhibits 60, 60-A, 61, 61-A, 61-B, 62-A, 63, 63-A, 64, 64-A, 65, 65-A, 66 and 66-A admitted into evidence)

[788] * * * Q. As you look at those instruments in front of you, Mr. Savage, you recall it was part of the term of the Maguire financing plan that when a set was on the floor for a full six months, if it had not been sold it was fully matured? A. Six months from the date of receipt.

Q. As you interpret the six months from the date of shipment is apparently the trust receipts? A. Right.

Q. We have disagreement or discrepancy on that. Let's pass that. Now, sir, it was your understanding, at least at some point at the end of those six months the item had to be paid for? A. That's correct.

Q. Now, during the months of August and September, aside from sets actually sold, did Continental T.V. make any payments whatsoever for matured items? A. Yes, they did.

Q. You have all the checks in front of you, and those all show checks payable for sets actually being sold during the months of August and September. A. They all indicate a date of sale.

Q. Look through them. And subject to verification, they all appear to bear sales dates preceding the dated [789] check? A. Right. That would be correct.

Q. That is correct. So in fact no maturity payments, if I may call them that, were made during the months of August and September, except with respect to sets actually sold, is that not so? A. No. I believe there were sets that matured—that became mature during September that were included on our transmittal, the checks after the 15th of September.

Q. That's correct. The first time that happened, sir, those were in the checks that were sent to the attorney, is that not so? A. That's right.

Q. That's the first time any purported payment was ever at least drawn up in a check item by you for matured items not sold? A. I wouldn't say that was the first time.

Q. In the months of August and September? A. In August and September.

Q. During the months of August and September did you make any renewal payments; that is to say, the type of payment which would be called interest? A. No.

Q. For the 5th and 6th month that Continental T.V. [790] held the merchandise? A. No.

Q. That was at Mr. Shahood's direction, was it not? A. That's correct.

Q. He simply instructed you to cease making renewal payments or interest payments to Maguire? A. That's correct.

Q. You had made interest payments per the Maguire statements earlier, had you not? A. Yes, that's right.

Q. In fact, in June and July you worked out an agreement as to how much renewal payments per the July 1st, 1965 statement should be paid. A. That's right.

Q. And it is your understanding, is it not, that Continental T.V., for whatever reason, just simply ceased making any renewal payments whatsoever to Maguire in the months of August and into September? A. That's right.

Q. Now, with respect to these checks that were sent to counsel for $62,900 worth of merchandise—— A. That's the approximate figure.

Q. You were going through this very procedure with those, were you not? [791] Drawing up a check, working out the attachment based on the date sold, and then transmitting them to Mr. Rudy? A. As of the period of time they matured?

Q. As of the period of time they matured or sold. A. Right.

Q. Now, it was your understanding, was it not, that this total of $62,900 represented the amount of money that was due and owing, or at least payable to Maguire under the system that you had previously been following? A. Yes.

Q. So when Mr. Pedlow and Mr. Rivers were in San Francisco in October and said they thought $96,000 was due and owing, you knew at least $62,900 was due and owing and not paid. You knew that, is that not so? A. Yes.

Q. So the difference between Continental T.V.'s records on the one hand, and the Sylvania-Maguire records on the other was approximately $34,000 in dispute, apparently? A. Somewhere in the vicinity.

Q. Somewhere in the vicinity. You knew these checks that were being sent to the attorneys were not being transmitted on Sylvania-Maguire. [792] You knew that? A. That was my understanding.

Q. You understood that when Mr. Pedlow and Mr. Rivers were out of here in early October for this floor check? A. That's correct.

Q. And you knew that these checks that were sent to the attorney were not certified? You hadn't certified them? A. No.

Q. You had no reason to think they were certified? A. No reason to certify them.

Q. So you know that if for any reason someone wanted to withdraw the funds upon which those checks were drawn, then the checks wouldn't be worth

anything. You knew that, didn't you? A. I wouldn't have any way of concerning myself with it.

Q. Not your problem at all? A. That's correct.

Q. It is a fact, is it not, that the decision to send these checks to the attorneys, that was also at Mr. Shahood's direction? A. That's his direction, yes.

Testimony of Kenneth C. Lopolito

[891] Q. Based upon your experience, however, is it not a fact that it was not uncommon for very large volume dealers to take as long as 10 to 14 days to make SAU payments under the Maguire plan? A. Are you speaking of the experience to that point in time?

Q. Yes, sir. A. Well, I only really had the two large volume accounts, perhaps three, and if the pattern is correct, it would take—we would ask for a weekly payment from all of these people.

Q. But Mr. Anderson would commonly take more than a week, for instance? A. Well, sir, I can only guess, as I say, to the three times a month, or the every 10 days or so, which would be more then.

Q. The largest dealers you had in 1965 were Handy Andy and Continental T.V.; isn't that correct? A. Yes, sir.

* * *

[906] Q. All right. Now, under Sylvania's policies, who represents the Maguire plan to prospective

dealers? Is it somebody in the credit department or somebody in the sales department? A. I think under circumstances as they existed at that time, I think everyone represented. But it was the credit department's duty to represent the Maguire plan as well as the John P. Maguire people themselves.

Q. Did you have any knowledge as to how the Maguire plan was presented to Continental T.V., sir? A. Only in what I have heard. I was not there at the time.

Q. So your information is all after the fact? A. Yes, it is.

Q. Now, did you know that in 1964 and in 1965 the District Sales Managers for Sylvania were representing the terms of the Maguire plan to prospective dealers? A. I don't know that for a fact, but I know that our salesmen continue to do this today.

Q. Have you ever seen the sales manual and check list which explains to them the manner in which to outline the terms to the dealer? A. I think I know what you are referring to, but I am not specifically sure.

Q. Let me show you Exhibit G, Mr. Lopolito, which is [907] several pages from the Sylvania operation manual followed by District Sales Managers, and refer you to the second page of that document, and particularly this language in the middle of the page:

> "Outline it in this manner: 1. With this plan Sylvania finances their product in the dealer's store for 4 months free."

Turning over to the next to the last page at the bottom of that paragraph:

> "This plan allows the dealer to display and inventory the Sylvania line for a 120 day period with no extra charges."

Now, my question, Mr. Lopolito, is in 1965 did you realize, sir, that the Sylvania salesmen were making the representations contained in that language to prospective dealers for the Maguire plan? A. I realized until—I realized it, and at that time I had many meetings with our salesmen trying to advise them that we in the credit department tried to administer the credit, and this particular point pertained to credit in that it was incorrect if they were passing on this information.

Q. When is the first time in 1965 that you so advised a salesman A. I do not recall.

Q. When is the first time in 1965 that you so advised [908] Mr. French? A. Again, I do not recall. After April.

Q. As a matter of fact, you don't have any personal knowledge as to whether or not Mr. French represented what this manual says to Mr. Shahood, for instance, when Continental accepted the Maguire plan A. No, sir, I do not.

* * *

[953] * * * Q. All right. Now, did you attend a credit meeting at the Chicago convention, sir? A. Yes.

Q. And was Continental T.V. discussed among other things at that credit meeting? A. Are you

referring to a meeting without Continental T.V. in attendance?

Q. Yes, sir. A. Mr. Miller, I had discussions about Continental T.V. while in Chicago, prior to the meeting, that Mr. Shahood attended, but specifically I do not remember any meeting or any real discussion other than in generalities.

Q. All right, sir. Let's get to the meeting at which Mr. Shahood was present and I think you were present, correct? A. Yes, sir.

Q. Mr. Lockard, the controller of the company, was he there? A. Yes, sir.

Q. And Mr. Rivers? A. Yes.

Q. Mr. Callahan? A. Yes, he was.

Q. Mr. Carroll, the sales manager? [954] A. Yes.

Q. Was Mr. French there? A. I thought he was if my memory serves me correctly.

Q. Generally, what was the purpose of this meeting? A. As I remember, the purpose of the meeting was to clarify Sylvania's situation with Continental and Continental's situation with Sylvania.

Q. That is right. Now, one of the things that needed clarification at that time was the fact that Continental was attempting to straighten out its credit difficulties that it felt it was having by calling the national people in Batavia directly, as you previously stated. A. That was talked about at the meeting.

Q. And Mr. Shahood on behalf of Continental T.V. agreed at the meeting to henceforth channel all communications through your Los Angeles office, did he not? A. Yes, sir.

Q. What else happened at that meeting? A. They established that Continental would start using the lock box. There was a matter, I believe, of a double shipment of television products and Mr. Shahood of Continental T.V. was granted an extension of time to pay the maturities on that.

Q. Who granted that, sir? [955] A. It must have been Mr. Lockard. He was conducting the meeting.

Q. And when were those sets becoming matured? A. I don't remember when they originally were matured. They could have been matured at the time of the meeting. I can remember the payment dates that were set up for the extensions.

Q. Okay. So, let's see if I can review this just briefly. Mr. Shahood agreed to work through your Los Angeles office, right? A. Yes, he had.

Q. Mr. Lockard gave an extension to certain color T.V. merchandise? A. Yes.

Q. Mr. Shahood also agreed to use the lock box? A. Right.

Q. In San Francisco? A. Yes.

Q. Was Continental's performance under the Maquire plan discussed, that is, matured payments, SAU payments? A. Well, I don't specifically remember. I know there is a followup letter that outlines many of these things.

Q. Let me show you that. [956] Exhibit B-G is a June 21, 1965 letter with a cover letter from Mr. Lockard to Mr. Shahood containing attached to it a letter of the same date from Mr. Lockard to Mr.

Pedlow; Mr. Pedlow being the vice-president and Maguire. A. Yes.

Q. Have you had a chance to review yourself by reading that letter in the last two or three days?

A. No. But within the last month or so I think I have seen this letter.

Q. All right, sir. Let's go to the cover letter, that is, the one from Mr. Lockard, the controller of the company to Mr. Shahood.

He says:

"I am attaching a copy of my letter to Don Pedlow in which I summarized our Chicago discussion.

"If you have any questions regarding the items I have enumerated, I would appreciate your bringing them to my personal attention so that they can be resolved and that we can turn this problem back to the local representatives of Sylvania and Maguire for continued action.

"It was a pleasure seeing you in Chicago and when I get out to the Coast again I may just take you up on your offer to play golf at Alemdon.

"Kindest personal regards."

[957] Attached to it is a letter from J. Lee Lock ard to Mr. Don Pedlow.

It says:

"Dear Don:

"This letter will serve to summar[illegible] my understanding of our meeting in Chicago with George Shahood of Continental T.V. I felt it best to get these points in writing while they are still fresh

in my mind for the guidance of both your field auditors and our district credit supervisor, Mr. Ken Lopolito."

Did you receive a copy of this letter, sir? A. Yes, sir.

Q. [Reading] "1. There are approximately 60 color TV sets [Model 21-LC21 CU and 21-LC21 KU] which were billed on a single invoice for which the free-flowing period should be extended by two months from the present maturity date. You will recall that these were sets on which there were some confusion as to whether or not the order was either cancelled or duplicated, but in any event, these sets were shipped and it is Sylvania's desire that an additional two months free-flowing be granted to the account prior to the beginning of any interest or any renewal [958] charge. If you are unable to locate this specific transaction, I am sure that Tom Rivers can furnish the invoice number."

Let me ask you first, sir, as a matter of fact, Maguire Company did not pick up these extensions and reflect them on their payments, isn't that a fact? A. Not the first month. I believe they did after the first month.

Q. You think they did in July? A. Could have been July or August. But I know they skipped a month.

Q. Do you recall that it was September, September 22, before Borg-Warner Acceptance Company picked up the extensions given by Mr. Lockard here

in June? A. It could have been immaterial, because since the extensions were given, the only thing it shows is on a piece of paper——

Q. And Sylvania, of course, didn't expect—— A. Continental was not being asked to pay for that except by the agreement.

Q. But yet you would agree that if these extensions, as I say, were not picked up until late September that each of those monthly statements from Maguire until it was picked up in late September would show an erroneous service charge for those categories of sets? [959] A. Asked that way, yes.

Q. And would also show an erroneous pay immediately amount attributable to those sets? A. If we are talking after the six months period of time, Mr. Miller, yes, it would.

Q. Now, sir, Page 2 of this seems to be an agreement concerning some maturities, some other maturities.

> "2. All maturities which would normally have been payable on the date of the last audit [the ill-fated June 1] are payable on June 22, and I have allowed Mr. Shahood until July 22 to make payment for any maturities that arise after June 1 and prior to July 22. In the future all maturities are due on the date that the trust receipts do mature, but I would not be overly concerned if such maturities were included in the check which is prepared and mailed on the following Friday."

So if I understand that paragraph, Mr. Lopolito, —and you were present at that meeting when this agreement was arrived at, correct? A. Yes.

Q. So Mr. Lopolito said:

> "In addition to extending maturities on those 200 sets or how ever many there were, 60 sets, we are also going to allow you to [960] pay maturities one time on June 22 for all maturities now due;" correct?

A. Correct. You said Mr. Lopolito but you mean Mr. Lockard.

Q. I am sorry, Mr. Lockard. In other words, all maturities now due at the time of our credit meeting will be payable June 22. A. Yes.

Q. And any maturities arising from the first of June to July 22 will be paid on July 22; is that what he says? A. Yes, he does.

Q. So you knew at that time to expect only two maturity payments from Continental T.V., one in June and one in July, until the month of August; isn't that right? A. Yes, as I remember it.

Q. That was the agreement, correct? A. Correct.

Q. Okay. He says:

> "We agree, as a convenience to Continental T.V., that J. P. Maguire would not schedule audits on a Monday or Tuesday of any week and if the holiday fell on a Monday an audit would not be set up by Maguire until either Thursday or Friday of that [961] week [if this would be in line with your normal schedule] so as to provide two full working days for Continental T. V. to clear their previous weekend business."

Of course, you were present at this meeting where this was discussed, correct? A. Yes. I think I was

present at the meeting during anything that was discussed in this.

[Continued on next page; nothing omitted.]

[962] Q. Fine. But you did have some knowledge at that time that Maguire had previously agreed to this very thing that Mr. Lockard speaks of here, that is, no field audit the day after a holiday or weekend? A. I am aware of that situation. And, as I pointed out before, I don't know exactly when the first time I found out. I don't recall.

Q. Okay. Next he says:

> "Continental T.V. will begin using the San Francisco lock box depository for all payments to J. P. Maguire and Co. effective immediately."

Now, up to this time Continental had resisted using that lock box, correct? A. Yes, they have.

Q. Next,

> "Mr. Shahood agreed that Continental T.V. will prepare and mail a check each Friday to the San Francisco depository covering all transactions through the preceding Friday. This allows an average of 10 days from date of sale and in some cases might run as high as 13 days. We agreed that so long as Continental T.V. is making payments on each Friday in full for merchandise sold through the preceding Friday that the Maguire auditors need **[963]** not pick up a check to satisfy any SAU condition that has arisen since the second preceding Friday. Example: In the month of July, 1965, sales made between July 10 and July 16 would be payable on July 23. If an audit took place on Wednesday, July 21, settlement for sales made between the 10th and 16th would be expected on July 23 and sales between July 17 and 21—the date of the audit—would normally be expected on Friday, July 30. Should there be any further questions on this item please bring them to my attention for discussions."

Now, what this means, does it not, Mr. Lopolito, that the agreement was made that Continental would pay on a Friday for all sales which have occurred within the last 14 days? A. I believe it was 13.

Q. 13? A. Yes.

Q. So any sale occurring within that 13-day period would be paid on that specific Friday. There was always a two-week, Friday to Friday lag, correct? But it could be as much as that, let me say it that way. A. It could be as much as that.

Q. Correct. **[964]** Now, previous to this agreement in June, what was the payment schedule for SAU's with Continental? A. I believe we asked them to pay us once a week.

Q. But as these reports—these audit reports have indicated, for April, May and June they were taking from nine to twelve or thirteen days typically, weren't they? A. As they indicated, yes.

Q. So this really just formalized pretty much what Continental's habits had been? A. I think it liberalized it, too, in my own personal opinion.

Q. Okay. And Mr. Lockard was the person who granted this agreement, or granted this concession, if you call it that, to Continental on this occasion? A. Yes, sir.

* * *

[965] * * * Q. Mr. Lopolito, I think we broke off talking about the June letter from Mr. Lockard, is that correct? A. Yes, sir.

Q. And Mr. Lockard ends up, after summarizing these arrangements and agreements made with Continental by saying that:

> "There were several other items discussed with Mr. Shahood involving our agreement to extend this credit guide limit to $350,000 to offset the color sets mentioned previously, and this limit applies only to the 'Convention Orders', but does not change the basic credit guide limit of Continental T.V. of $300,000.
>
> "I thought our meeting was a fruitful one and I am asking Mr. Shahood to comment directly to me if there are any points in this letter which do not match up with the discussion we had in Chicago.
>
> "Thank you very much for handling this on the part of J. P. Maguire & Co.
>
> "Kindest personal regards. Mr. Lockard."

[966] Copies sent to Mr. Rivers, yourself, Mr. Lopolito, and Mr. Shahood; correct? A. Yes.

Mr. Miller: Your Honor, we would offer this as claimant's next as marked.

Mr. Popofsky: No objection, Your Honor.

The Court: Admitted.

The Clerk: Exhibit BG introduced and admitted in evidence.

(Claimant's Exhibit B-G marked and received into evidence.)

* * *

[977] * * * Q. You still approved orders after June of 1965 for Continental, didn't you? A. I did that from April to June, before the meeting was held.

Q. Didn't you approve a July order for Continental T.V.? A. Yes.

Q. Didn't you approve an August order for Continental T.V.? A. If there was an order in August, I probably approved it, yes, sir.

Q. Right. And didn't you have the Continental T.V. file folder in your office in Los Angeles during those months? A. Yes. But again Continental T.V. was the only account of an order that I had ever approved that was rejected by Batavia.

Q. That was which order, sir? A. I assume it was the August order. I think maybe the September order.

Q. We'll get to that order in a few moments, Mr. Lopolito. But until the order which you just made reference [978] to, no order placed by Continental T.V. and approved by yourself in Los Angeles had ever been rejected by Batavia. That's a true statement, isn't it? A. The telegram that you showed me earlier, the one from Mr. Rivers——

Q. Hm-hmm. A. ——didn't that refer to an order to be held?

Q. That's right. In other words, an order was held for two or three days until the outstanding balance got paid down to the credit limit. A. And I assume that I processed that order the same way as the later order, so this was not the first time. It happened prior to that time.

Q. That order was not rejected, was it? A. It was for a period of time, Mr. Miller.

Q. Let me rephrase the question, Mr. Lopolito. I am asking you until the order you just made reference to in September or August, 1955, do you have any personal knowledge that any order ever approved for Continental T.V. by yourself was every totally and absolutely rejected and never shipped by Batavia? A. No, sir.

* * *

[981] * * * Q. Did you know Continental's financial condition at that time personally? A. I don't think that I had a true picture of the last or most recent financial situation.

Q. Do you know of anybody in your organization who did know Continental's financial condition as of August of 1965? A. No, sir, I don't.

Q. All right. Now, you recall that in the meeting with Mr. Lockard in Chicago he said that Continental could have until June 22 to pay the maturities then due? A. Yes.

Q. And those maturities were paid as agreed, were they not? A. There was a payment on the 22nd of June or [982] thereabouts.

Q. Yes, sir. A. I think it was the 23rd of June.

Q. And did not Continental T.V. use part of its advertising claim which it had been asking for for several months to take care of that maturity payment? A. Yes, they did.

Q. Let me show you Exhibit B-A, which purports to be a letter of May 21, 1965, from yourself to Mr. Petrick of the Maguire Company. Do you recall seeing that before, sir? A. [Examining] Yes, I wrote it.

Q. All right. You say:

> "Dear Bud: During the last week Sylvania has processed three advertising claims which will be transferred to Continental's Maguire account the first of June. Mr. Shahood is very cognizant of these claims and would like them applied to the $17,000 due in maturities."

Stopping there for a moment, the $17,000, Mr. Lopolito, is again these defective stereo sets we've talked about, correct? A. I believe it is.

Q. Goes on to say—you go on to say:

> "The total credit will amount to $8,184.32, so it will be appreciated if you will deduct this [983] amount when you pick up the check for maturities."

Now, your intent by writing this letter, Mr. Lopolito, was to allow Continental T.V. to use these long-sought advertising credits to help pay the $17,000 maturities, correct? A. Yes.

Mr. Miller: We'll offer this as Plaintiff's next in order, Your Honor, as marked.

* * *

The Clerk: Exhibit B-A introduced and admitted in evidence.

[Letter dated May 21, 1965 from Mr. Lopolito to Mr. Petrick, marked Claimant's Exhibit B-A for identification was received in evidence.]

* * * Q. All right. Now, the next thing that Mr. Lockard said at that meeting at the Convention was that the maturities arising after June 1 should be paid for on July 22; do you recall that? A. Yes, I believe those are the dates.

Q. And as a matter of fact, Continental complied with this agreement and made that payment on July 22, correct? A. They made the payment. I don't know the exact date of it.

Q. Do you recall in making that payment that they [984] offset excise tax due against the payment? A. Yes, there was an excise tax returned to Continental T.V. and they used that as part payment.

Q. All right, sir. Let me show you Exhibits B-J and B-K. Exhibit B-J purports to be a private wire from Mr. Lockard to yourself. Take a moment and review that. A. [Examining] Yes.

Q. All right. He says:

"Continental T.V. will be receiving an excise tax credit in the amount of $19,937.62. The chances are that this will be mailed either tomorrow or early next week and will be a credit to Continental T.V. open account. As you will recall there are certain maturity obligations to be met by Shahood on July 22. Please be prepared

to utilize this credict in settlement of these obligations, as well as collection of any other SAU items."

The wire bears what date?

A. July 8, 1965.

Q. All right, sir. Now, Exhibit B-K is a credit invoice. Have you seen that before? A. [Examining] Well, this is the actual invoice for the excise tax, according to this.

Q. All right. Bears the same date, July 9—I'm sorry, the next day, July 9, 1965, and it is in a sum of [985] $20,031.38, correct? A. Yes, sir.

Q. So that this is the credit invoice granting Continental T.V. Incorporated at $20,000 credit which by agreement was used against the maturity payment on July 22? A. Yes.

Q. Okay. Your Honor, we would offer these two documents as marked as Plaintiff's next.

* * *

The Clerk: Exhibits B-J and B-K introduced and admitted in evidence.

[Telegram from Lockard to Lopolito and credit invoice, marked Claimant's Exhibits B-J and B-K, respectively, for identification, were received in evidence.]

* * * Q. Now, Mr. Lockard never complained to you that Continental was deficient in any way in paying the maturities due on the 22nd of July, did he? A. I don't recall Mr. Lockard talking to me about this subject.

Q. Now, the Maguire field audit was held the last of June, the first day of July, as it was routinely for the months preceding. Do you recall seeing the audit report for [986] June 30-July 1 audit? It's marked D-K. A. [Examining] Yes, I have seen this.

Q. All right, sir. And it indicates "Additional Locations, six." A. Yes.

Q. It indicates $16,303 sold and unpaid at the time of this audit? A. Yes.

Q. And it indicates that the above sold items will be paid July 9 as per agreement in letter dated June 21 by Mr. Lockard, correct? That's what it says. A. That's what it says.

Q. But that's not what the agreement was, was it? A. I don't believe it is.

Q. Okay. Mr. Lockard said we could have until the 22nd. A. No, sir. This is talking about SAU. You're referring to maturities, I believe.

Q. All right. Is there any way you can tell from this document whether any part or all of this $16,000 figure is in fact SAU? A. I have to take the word of the person that signed it, because this is the area that SAU information is supposed to be put on the sheet.

Q. All right, sir. Since it appears under "Sold and [987] unpaid," you are assuming, and for that reason alone, you are assuming that it is all SAU totally, correct? A. Yes.

Q. Okay. At the bottom is says, again the credit section, says "See attached memo," and then there's

one, two, three pages of information concerning specific models, serial numbers and amounts, and it is headed "Items awaiting credit or adjustment."

Now, Mr. Lopolito, by the time you got this exhibit, and again it is D-K, you realized that much of the credit requested on that audit report had been previously requested by Continental T.V.; isn't that a fact? A. In comparing that, there may be some of the same items, yes, sir.

Q. And that situation whereby Continental had been requesting credit for concealed freight damage, that existed to your knowledge for two or three months? A. Some of the items had existed for a period of time.

Q. Right. Do you recall whether you did anything personally to trace these items so that credit could properly be given to Continental T.V.? A. At this time no more than I previously stated, that I know what my own system would be. Whether I followed through with it or not——

Q. All right. Now, sir, here's Exhibit D-L, which [988] is the audit followup to the July 1st audit. Again it is directed to you, correct? A. [Examining] Yes.

Q. "Re Continental T.V. Incorporated; date of audit June 30 and July 1," correct? A. Yes.

Q. Amount of sold items $16,303.61. Does that agree with the amount shown on the field audit report? A. Yes, it does.

Q. Date paid July 12, or eleven days after the audit was complete, correct? A. Yes.

Q. Again, is this in keeping with Continental's usual delay experienced in the past? A. In keeping with the pattern you've been discussing.

Q. Yes. And apparently the pattern that Continental T.V. used to make these payments the last three of four months that we have discussed, correct? A. Yes, sir.

Mr. Miller: We would offer Exhibit D-L and D-K as Plaintiff's next in order as marked, Your Honor.

* * *

The Clerk: Exhibits D-K and D-L introduced and admitted in evidence.

[989] [Audit report and followup, marked Claimant's Exhibits D-K and D-L respectively, for identification, were received in evidence.]

* * * Q. All right, Now, getting into July and August again, Mr. Lopolito, if I may, do you have any recollection as to whether or not Continental had paid its service charges—its interest charges on the Maguire plan that summer? A. I don't believe they had, and I don't re——

Q. Let me show you Exhibit B-L, which is a letter again from yourself to Mr. *La Teer*. Who is Mr. La Teer? A. He was collection manager for John P. Maguire Company, New York.

Q. All right. And you say—this is a letter on July 19, by the way, correct? A. Yes.

Q. "Dear Jack: Enclosed is a check for $468.88 paid on service charges for Continental

T.V. The breakdown is on the check and should be applied as follows,"

et cetera et cetera. You end up by saying:

"This should total the current renewal charges due of $1,392.29."

So by the date of this letter at least, July 19, it is clear, is it not, Mr. Lopolito, that Continental T.V. was current on its renewal charges on the Maguire plan?

[990] A. Excuse me just a moment, please.

Q. Surely. A. [Examining] We made a settlement here based on those items that were the ones that you were referring to for damage, and we did not charge them any renewal charge for the damaged goods, therefore reduced the $1392 figure to the $468, I believe.

Q. Yes. And by July 19, Continental T.V. was current on their interest charges, correct? A. Based on this letter it would be correct.

Q. Thank you, sir. We would offer Exhibit B-L as Plaintiff's next in order as marked.

* * *

The Clerk: B-L introduced and admitted in evidence.

[Letter from Lopolito to LaTeer, marked Claimant's Exhibit B-L for identification, was received in evidence.]

* * * Q. All right. Now, Mr. Lopolito, we have alluded to a July order. Do you recall that Continen-

tal T.V. placed through Salesman French an order in July for Sylvania merchandise? A. Was this $16,000 or $63,000?

Q. $63,658. [991] A. I remember the sixty-three thousand dollar——

Q. All right. Exhibit P. Let me show you the order, sir. Did Mr. French transmit that order routinely to you in Los Angeles, sir? A. I can't say, Mr. Miller. I see no place on this order that I have made any notation that would indicate that the order was channeled through Los Angeles via Batavia.

Q. Let me refresh your recollection, sir, on Page 167 of your deposition, line 6:

> "Q. You sent the order just to the customer service department. Now, the July 3rd order was given a credit approval number and submitted, and you did all that you customarily do with respect to that order?
>
> "A. Yes, sir.
>
> "Q. Was there any thought given by you to not approving that order?
>
> "A. No, sir.
>
> "Q. All right. Do you know whether or not that order was shipped?
>
> "A. I believe it was shipped."

Now, does that help refresh you, sir, that the July 3rd order was in fact received and given a credit approval number by yourself and sent on to Batavia for shipment?

A. No, it doesn't. Again I generally put a stamp [992] and initial on any order. I do not find it on

here. Now, back in 1966, if I remember it as going through my office, then perhaps it did, but——

Q. Well, I assume your recollection of this event would be better in '66 than it would be today? A. Obviously.

Q. All right. You have no recollection today about disapproving the July 23 order, do you? A. No, I don't.

Q. This is July 3, was it? A. That's dated March —rather June 20.

Q. June 20. Okay. It was submitted I think early the first week in July. So as far as you know, as you sit here, your deposition testimony is correct and you did approve the July 3rd order and it was sent to Batavia routinely, was it not? A. Yes.

Q. Okay. Now of course by early August or late July you had had this discussion with Mr. Shahood and had learned that he had a specific location in Sacramento? A. I do not recall the dates.

Q. Well, by August 4th Mr. Rivers is writing a letter to Mr. Lockard telling him about a discussion with you—— A. Yes.

Q. ——correct? We just reviewed that letter. [993] A. It was the end of July.

Q. So the end of July you learned I suppose for the first time from Mr. Shahood that he's got a specific location for his new store. A. I think so.

Q. Now, before we get to Sacramento, Mr. Lopolito, after the June convention did you call on Continental chain of stores personally? A. I was in the stores after the June convention.

Q. Okay. A. At least one time.

Q. Do you recall any discussions you may have had on that visit, or if there was more than one on the second visit, as to extending certain merchandise on the Maguire plan? A. I really do not remember specifically. I know that I did it and I don't know exactly or remember exactly what I was talking about at that time.

Q. You discussed that subject, however, with Mr. Savage of Continental T.V., you recall that? A. No, I do not at this time.

Q. Now, let me see if this refreshes you. On Page 173 starting on Line 6.

"Q. Do you recall when this meeting was? Was it in July?

"A. I don't remember. It was during the summer [994] after the June convention, but I don't remember exactly when it was.

"Q. You had a meeting in Mr. Shahood's office with he and Mr. Savage?

"A. Yes. I remember him calling Mr. Savage into his office.

"Q. What did you discuss at this meeting at that time?

"A. It was probably maturities and SAU problems. Specifically I don't remember.

"Q. What was the nature of any problems that you recall at that time?

"A. I do not recall the exact nature of the problems.

"Q. In fact, they were paying SAU's every Friday, were they not?

"A. As far as I recall they were.

"Q. Now, you discussed extensions of certain trust receipts with Mr. Savage at that meeting, didn't you?

"A. At one time if that was the meeting, yes, I did discuss with Mr. Savage about extensions.

"Q. And he had a list of certain trust receipts that he made up?

"A. Yes.

"Q. And you went through this list and you checked off various items on the list on these trust receipts?

"A. I did something something similar. Exactly what [995] I did I do not recall but I remember the incident, yes.

"Q. What is the reason for doing this at this time, do you recall?

"A. They had asked me for some extra time and I believe that I granted it. I don't remember the specific reason why they asked me. It wasn't an unreasonable request.

"Q. They asked you for a certain extension of time and you gave it to them?

"A. Yes.

"Q. Do you recall what amount of time this was?

"A. No, I don't. Might have been two weeks but I am not sure."

Q. Now, does this help refresh your recollection, Mr. Lopolito, that in fact sometime after the June convention you did extend certain sets under the flooring terms? A. I remember from your reading

to me, but at this time I really have no recollection of exactly what we talked about at that time.

Q. I take it you don't have any personal knowledge that the deposition testimony under oath is incorrect? A. Shouldn't be incorrect.

Q. All right, sir. Now, is it not a fact, sir, that after the June convention Continental's payment habits were better, not worse, but better than they had been prior to the convention? [996] A. I believe I stated that in my deposition that they were regularly paid. There was a regular check on Friday.

Q. But I am asking generally, sir, isn't it a fact that Continental's payment habits were better after the convention to October than they had been prior to the convention? A. They used the lock box after the convention?

Q. Yes. A. And again, as they—as I recall, they made a payment each Friday. Now, that is better than it was, because as you have noted earlier, they were running ten, eleven, twelve days from between the date of the audit and the time of the payment being made. So that would have been better, yes.

Q. So generally speaking that statement is a fact, is it not? A. Yes, sir.

Q. Now, do you recall that Continental T.V. appeared on any of the delinquency reports in July? A. What delinquency reports are you referring to?

Q. Let me show them to you. Marked as B-M is a quarterly report of accounts over ten days past due, your area, Area 34. A. Yes.

[997] Q. To Mr. Rivers in Batavia and it is from your Los Angeles office. A. Yes.

Q. Signed by yourself. A. Yes.

Q. All right. The date on that report is what, sir? A. July 12, 1965.

Q. And the purpose of that report is to reflect delinquent accounts as of that date? A. Yes, sir.

Q. Is Continental T.V. on that report? A. It wouldn't be because of the June meeting where we gave them the extension until the second of July.

Q. I take it your answer is—— A. They are not.

Q. Let me show you Exhibit D-N dated what, sir? A. July 13.

Q. To Mr. Rivers. A. Yes, sir.

Q. From yourself? A. Yes.

Q. Entitled "Past Due accounts." A. Yes.

Q. Area 34. That is your area? [998] A. Yes, it is.

Q. That is also the Northern California area? A. Yes.

Q. Is Continental T.V. on that report? A. They are not.

Q. Let me show you Exhibit B-O. The report is "Accounts with balances in excess of $10,000, Area 34." The date of that report is July 19, 1965. Again you prepared this for Mr. Rivers? A. Yes, sir.

Q. And it purports to only show outstanding balances without regard to how much if any is due at the moment, correct? A. That is correct.

Q. Continental T.V. is shown with a balance due of how much, sir? A. $224,635.83.

Q. The credit rating obtained from Dun & Bradstreet is unchanged from the previous report, correct? A. That is correct.

Q. The financial statement is shown last as June 1964. A. Yes.

Q. That is unchanged. A. I think the other one we looked at was January of '64. I would have to look at that.

Q. What does it say in the comment section about **[999]** Continental T.V.? A. It says, "Large volume account, $25,000 paid by 7-15."

Q. Now, let me show you Exhibit B-B. Do you recall this report? Take a moment and look at it, please. A. This is the SAU report that was made up by John P. Maguire Company.

Q. It is not on a national basis? A. National weekly.

Q. Does it incorporate the Northern California area? A. It would have been included or it should have been included.

Q. What is the date on that report? A. July 28, 1965.

[Continued on next page; nothing omitted.]

[1000] Q. Would you look through it, please, and tell me if Continental T.V. appears on it. A. No, sir, they do not.

Mr. Miller: Your Honor, I would like these four documents offered as claimant's next as marked.

* * *

The Clerk: Exhibits BP, BO, BM, BN introduced and admitted in evidence.

(Claimant's Exhibits BP, BO, BN and BM marked and received in evidence.)

* * *

[1003] * * * Q. Let me show you three August reports. The first is BR. It purports to be a report of accounts with balances in excess of $2,000 90 days past-due, for Northern California area 34; correct? A. Yes, sir.

Q. What date does it bear? A. August 13, 1965.

Q. Prepared by yourself? A. Yes.

Q. Is Continental T.V. listed on this report? A. No, sir.

Q. Let me show you Exhibit BS, accounts with balances in excess of $10,000, area 34, again prepared by yourself. A. Yes.

Q. And the date, sir? A. August 13, 1965.

Q. Sent to Botavia? A. Yes.

Q. And it lists Continental, correct, and Handy Andy? What is the outstanding balance as of August 13 for **[1004]** Continental T.V.? A. $174,035.

Q. And still it has the same credit rating for Continental T.V. as the previous report. A. Yes, I believe it does.

Q. And that's the same financial statement date as the previous report? A. Yes.

Q. All right, sir. Lastly, let me show you Exhibit BT and again it is an SAU report, delinquent SAU dealer. A. Yes.

Q. And what's the date on that report? A. August 26, 1965.

Q. And that report was prepared by Maguire Company? A. Yes.

Q. Would you look through it, please, and see if Continental T.V. is on it. A. No, sir.

Mr. Miller: I would offer these three as Claimant's next marked BT, BS and BR, please.

* * *

The Clerk: Exhibits BR, BS and BT introduced and admitted in evidence.

[1005] (Claimant's Exhibits BR, BS and BT marked and received in evidence)

* * * Q. Of course, also, Mr. Lopolito, there was an August field audit report by the Maguire Company, correct? A. Should have been.

Q. Let me show you Exhibit BN which is the August 5 and August 6 field audit report on Continental T.V. and its affiliated stores, correct? A. Yes.

Q. And it shows $14,179 sold and unpaid, correct? A. Yes.

Q. Now, in the comments section it says:

"Payment of $8,187 will be paid on check No. 2338 dated August 6, 1965. Mr. Shahood was in El Paso, Texas and could not sign checks. Payment will be mailed on his return August 9, 1965. The remaining sold items of $5991 to be paid to JPM on August 13. These items were sold in the last two days."

All right. At the bottom of the page it says:

"Refer to my report of July 1, 1965, listing all items which were freight claimed. Dealer waiting for credit."

Then there is one additional item here in which [1006] Mr. Petrick says:

"Dealer did not receive this item. Credit should be issued dealer by JPM."

It is signed by Mr. Petrick. A. Yes.

Q. So apparently by August of 1965, Continental T.V. had still not received this freight damage credit; is that correct, Mr. Lopolito? A. If that is what appears in this memo. Are you referring to the 21 items?

Q. Yes. Now, let me show you Exhibit BO which is the follow-up memo from yourself to Ken Lopolito respecting this August audit amount of sold items of $14,179. Does that agree with the amount shown on the audit? A. Yes.

Q. Date paid: August 25 or 20 days after the audit date? A. Yes.

Q. Of course, there is a note on the audit that Mr. Shahood was out of town, correct? A. Yes, there is.

Q. Out of the state? A. Yes.

[1007] Q. Now, did you personally complain to Continental T.V. about the delay of 20 days in payment of this item of $14,000 late in August? A. You mean after I received the payment or prior to receiving the payment?

Q. After you received Exhibit BO which notified you that the payment was 20 days after the audit. A. I do not recall.

(Continued on next page.)

[1008] Q. Do you recall whether anybody in Sylvania complained about the delay late in August

on this payment? A. I would not necessarily be made aware of any conversation between someone in Sylvania and Mr. Shahood's office.

Q. I understand that, but do you have any personal knowledge as to any such complaint? A. No, sir, I do not.

Q. The same answer, if I asked you about complaints by the Maguire Company? A. I have no recollection of any.

Q. All right, sir. We would offer these as Claimant's next in order, Your Honor, as marked, DN and DO.

* * *

The Clerk: Exhibits DN and DO introduced and admitted in evidence.

(Claimant's Exhibits DN and DO marked and received in evidence)

* * * Q. Now, Mr. Lopolito, on August 27 an order was placed by Continental T.V. routinely through Mr. French, the salesman, and that order was transmitted to your office in Los Angeles for credit approval. Let me show you that order, Exhibit R. **[1009]** Do you recall receiving that order, sir? A. No, sir.

I do not specifically recall receiving the order.

Q. Okay. I refer you, sir, to refresh your recollection, page 181, your deposition at page—at line 6:

"All right. Now, on or about August 27, you approved an order for approximately $116,000 worth of merchandise to Continental?

"A. I approved an order, yes."

Down at the bottom of page, starting at line 26:

"Q. Did you in fact send the August 27 order to Mr. Steiner?"

Page 182:

"A. Yes. I believe I did.

"Q. This would not be customary, would it?

"A. He is a member of the sales department, so he would have access to it.

"Q. Prior to that date had you ever sent any order directly to Ray Steiner or any customer?

"A. Not that I recall."

Now, does that help refresh you, Mr. Lopolito, that this was an order that had to be approved by Mr. Steiner as to mix, and that you were notified that you were to send **[1010]** the order on after approval directly to Mr. Steiner? A. I remember the incident, but also all of our orders are approved for mix at the sales department.

Q. All right, sir. But your recollection was at least as good in '66 as it is now, I take it, about this particular order? A. It had to be much better than it is five years later.

Q. So you don't have any reason to now believe that you did not in fact approve the August 27th order, isn't that correct? A. Well, I never disbelieved that I approved it. It was just that I did not recall the incident as you presented it.

* * *

[1012] * * * Q. Now, when is the first time that you knew that a Continental T.V. store was opened and operating in Sacramento with Sylvania merchan-

dise on the floor? A. I do not recall the specific date, but it was as a result of a telephone call from Mr. Hines.

Q. From Mr. Hines? A. Yes.

Q. He is the Sylvania sales manager for the Sacramento area? A. Yes, sir.

Q. Okay. In other words, he is Mr. French's counter part in Sacramento? A. Yes, it would be.

Q. Okay. You got a phone call from Mr. Hines, that was your [1013] first knowledge? A. Yes.

Q. Let me show you, sir, Exhibit T which is Mr. Hines' daily call report for September 7, 1965 signed by Mr. Hines, and the second entry indicates that he made a telephone call to your credit office in Los Angeles and talked to you personally; is that correct? A. Yes.

Q. And the date appearing on this call report is September 7, 1965? A. Yes.

Q. Would that refresh your recollection that was Mr. Hines called and said for the first time that the Continental T.V. had merchandise in Sacramento that it must have been on the 7th of September of 1965? A. Yes.

Q. All right. What did Mr. Hines tell you in that telephone conversation? A. I do not remember the specific conversation at this time, but in essence he said that there was Sylvania merchandise in the new Continental location and asked me about it. And I really recall nothing more about the conversation.

[1014] Q. Well, he told you specifically how many sets were on the floor, did he not? A. He may have, I do not remember now.

Q. Okay.

Page 177 of your deposition, Mr. Lopolito, at line 5:

"Q. When did you first discover that Continental T.V. had Sylvania merchandise in Sacramento?

"A. I don't—I imagine it was when—in September whenever the date was when he opened the store. It was probably the same day or the day after I had a call from Mr. Hines.

"Q. The district sales manager in that territory?

"A. Yes.

"Q. What did Mr. Hines tell you?

"A. He told me that Mr. Shahood had—I believe the number was 35 pieces or something of Sylvania merchandise in the store.

"Q. Why would he tell you this?

"A. I don't know.

"Q. Was he complaining to you about this?

"A. Yes, he was.

"Q. What was his complaint?

"A. The complaint of any salesman, he was worrying about his interest, and his interest was his dealer.

[1015] "Q. His primary interest was Mr. Anderson, was it not?

"A. Yes."

Now, you gave these responses to those questions——

Mr. Popofsky: Your Honor, may I request the next question and answer be read, if counsel please?

Mr. Miller: Certainly.

"Q. Did he mention Mr. Anderson during this conversation?

"A. I don't remember him mentioning him; no."

Mr. Popofsky: Thank you.

Mr. Miller: Q. Now, did you give those responses under oath, sir, to those questions, back in 1966? A. Yes, I did.

Q. All right. Does that help refresh your recollection, Mr. Lopolito, as to the substance of some of the conversation with Mr. Hines? A. Yes.

Q. Now, did not Mr. Hines also say to you in substance, isn't there some credit reason that we can use to prevent Continental from keeping that merchandise in Sacramento? A. I don't recall him saying anything like that.

Q. Let me show you Exhibit T again, sir, which [1016] is Mr. Hines' call report that I have showed you previously. And under the comment section, opposite the telephone notation made to you in Los Angeles, he spoke to you one quarter of one hour, and he has a notation that says, and you can follow it here, if you would, "Called Ken to see if he could keep merchandise out of Sacramento on grounds it was out of trust." Do you see that? A. Yes, I see it.

Q. Does that refresh your recollection as to a part of this conversation with Mr. Hines about Sacramento? A. No, Mr. Miller, because I had read this before you came back to me, and I did not remember

my direct conversation with Mr. Hines concerning what the point you have just made.

Q. All right. Mr. Hines was unhappy when he called you, was he not? A. Yes, I would say that he was.

Q. And you picked up the implication that he was unhappy because of the relationship he had with his existing dealer up there? A. Yes, I think you could say that.

Q. All right. And you knew that existing dealer was Handy Andy, [1017] didn't you? A. Yes.

Q. Now, how did you respond to Mr. Hines? A. You mean what did I tell Mr. Hines?

Q. Yes, sir. A. I really do not know, unless you have read something to me, but I don't think that I told him anything. I don't really feel that there was anything that I could have said to him then or even now. There was nothing that I could do. I know I did make a phone call to Mr. Rivers.

Q. All right. Page 178, line 8:

"What did you say you would do for him, if anything?

"A. I don't recall, because there was nothing that I could do for him. This was not a credit problem. Other than from Maguire's standpoint, there was merchandise in the store that they knew nothing about and, of course, their procedure, if they took a floor check, was to mark those pieces as sold.

"Q. Of course, they would tell the floor checker, Mr. Petrick, where the merchandise was?

In fact he did floor check Sacramento? You knew that, [1018] didn't you?

"A. I understand later he did floor check Sacramento."

Now, it is a fact, sir, is it not, as you said in your deposition under oath, that Mr. Hines' problem in Sacramento was not a credit problem? A. Yes, that's what I said.

Q. All right. And that was a true statement? A. As far as I know it to be it was true, yes, as I can remember.

* * *

[1021] * * * Q. All right. At any rate, you got this call from Mr. Hines. You had a discussion and, as a matter of fact, sir, on the same day, September 7th, you called Mr. Rivers, your boss in Batavia, and relayed the information which you had received from Mr. Hines, didn't you? A. Yes, I did.

Q. And you told him just about in substance what Mr. Hines told you? A. I think I did. That's what I would relate to him. I wouldn't withhold any information from him that I had. And I don't think that I would add to that.

[1022] Q. All right. What did Mr. Rivers tell you in response? A. There is a memo, I believe, Mr. Miller, that I have seen not too long ago, and it's just that he would take care of it, I believe was his response.

Q. Didn't he, in substance, say to you, Mr. Lopolito, that thank you for passing the information on, and said that he would take it to whomever should

have it in the corporation, he would pass it on, in substance, isn't that what he told you? A. Perhaps he did. I don't exactly recall.

Q. And he also told you on the phone that day that he would find out what was going on, in substance? A. Again I am sorry I do not recall what he said.

Q. All right. Now, Mr. Rivers asked you to shoot a memo to him to advise him as to the status of Continental T.V., correct? A. Yes, I believe I sent him a wire.

Q. That's right. And he asked that in this conversation on the 7th, didn't he? A. I think the wire was the next day or so, so he must have asked me in the conversation on the 7th.

Q. Let me show you Exhibit BU, which is apparently the private wire system from yourself to Mr. Rivers. [1023] What is the date, please? A. It's 9/7 of '65.

Q. September 7th, the same day you talked to Mr. Hines? A. Yes.

Q. And the same day you talked to Mr. Rivers? A. Yes.

Q. You sent the wire to Mr. Rivers? A. Yes.

Q. The wire says "Continental T.V. Payments August 5, 1965, $4,499.58; August 11, $8,187.40; August 17, $5,542.14; August 25, $10,080.49. Orders released September 2, $110,000 J. P. M. balance as of September 2, $202,716. Signed Ken Lopolito, Los Angeles."

Why did Mr. Rivers want to know the last order which you had released to Continental? A. I do

not know. He had the same information at Batavia, but somehow or another—obviously he asked me for this information.

Q. All right, Mr. Lopolito. That was the August 27th order that you referred to in that wire, isn't that right? A. If that was $110,000, and it had to be considering the date.

Mr. Miller: All right, sir. [1024] We would offer BU as our next exhibit.

* * *

The Clerk: Exhibit BU introduced and admitted in evidence.

(Claimant's Exhibit BU marked and received in evidence.)

* * * Q. All right. Mr. Rivers told you something else on the 7th of September, did he not, in substance he told you to hold Continental's last order until the situation was worked out in Sacramento, did he not, Mr. Lopolito? A. Mr. Miller, I do not exactly remember him saying that, but I know there is a wire that went out, and that could have been the basis of that wire. My memory is not that good.

Q. All right, sir. How many telephone conversations do you recall having with Mr. Rivers on the 7th, the same day you heard from Mr. Hines? A. I can think of only the one, but that does not say that I didn't have more than one.

Q. Let me show you Exhibit BV, which again is a private wire, and its date, sir, is what? [1025] A. September 8th, 1965.

Q. One day after you talked to Mr. Hines and Mr. Rivers? A. Yes.

Q. And it's a wire to Mr. Rivers? A. Yes.

Q. From yourself? A. Yes, it is.

Q. It says:

"Please advise current situation regarding Continental T.V. and request for franchise Sacramento. I have held last order pending hearing from you. Signed Ken Lopolito in Los Angeles."

Is that right, Mr. Lopolito? A. Yes.

(Continued on next page.)

[1026] Q. You sent Mr. Rivers that wire, sir, the day after you talked to Mr. Hines, the day after you talked to Mr. Rivers by phone? A. Yes.

Q. The order which you were holding and which you referred to in this telegram was the August order, was it not? A. If that was the order that was indicated at the time, it was the August order.

Q. In other words, whatever orders had been accepted, approved and not shipped by that time were caught in this hold, were they not? A. By the wording of the telegram, yes.

Mr. Miller: I would offer Exhibit B-V as Plaintiff's Exhibit in order as marked, Your Honor.

* * *

The Clerk: Exhibit B-V introduced and admitted in evidence.

[Telegram marked Claimant's Exhibit B-V for identification was received in evidence.]

* * * Q. Now, at the time that you sent this wire, Exhibit B-V to Mr. Rivers and told him that you were

still holding the orders pending hearing from him on the franchise in Sacramento, you had not at that time been told [1027] of any credit review, had you, respecting Continental T.V.? A. I do not recall being told that at that time.

Q. As a matter of fact, Mr. Lopolito, it was sometime after the date of this wire, the 8th of September, that Mr. Rivers first told you that there was a credit review under way of Continental T.V.'s account; isn't that a fact? A. I don't recall the specific date.

Q. Do you remember whether it was after talking to Mr. Rivers on the phone? A. I am somewhat confused on those dates. There were several things that happened within a two-week period, and the sequence of those events I am not clear.

Q. Let me refresh you, on Page 183, Line 5:

"Q. After you approved the order and sent it to Mr. Stein, did you ever have occasion to contact Batavia and tell them to hold that order?

"A. I did not.

"Q. In fact that order was held, though, wasn't it?

"A. I understand it was.

"Q. How did you find out about that?

"A. I was informed by Batavia.

"Q. Who in Batavia?

"A. Tom Rivers, I believe.

"Q. At or about what time did Mr. Rivers advise [1028] you of this credit hold?

"A I would say perhaps fifteen days after I turned in the order.

"Q. Would this credit hold with Mr. Rivers be before or after you talked to Mr. Hines and Mr. Rivers?

"A. As I remember, it was after."

Now, does that refresh your recollection, sir, to this particular incident in that you in fact talked to Mr. Hines—— Mr. Rivers on the 7th of September, pursuant to instructions from Mr. Rivers on the 8th you sent this wire concerning Sacramento, and thereafter for the first time you were advised that there was a credit review of the Continental T.V. account? In that did you say that he mentioned that there was a credit review after such time? A. Yes, sir, if that's what I said at that time.

Q. Your recollection would be better then, wouldn't it? A. It should have been, [illegible], sir.

Q. All right. Now, did not Mr. Rivers also tell you sometime after you sent this exhibit B-V telegram that you were not to have any further contact with Continental T.V.? A. No, sir, I don't believe Mr. Rivers told me.

Q. Who told you that? [1029] A. Mr. Lockard.

Q. Mr. Lockard, controller of the company? A. Yes.

Q. All right. And he told you not to have any further contact with Continental T.V. and specifically not with Mr. Shahood, didn't he? A. Yes.

Q. And in fact, did he not suggest that you should have your phone calls screened so that you would not by inadvertence talk to somebody from Continental? A. Yes, he did.

Q. Now, at the time that Mr. Lockard told you that, did you know of any reason, Mr. Lopolito, why you should not be talking to Continental T.V.? A. You're asking me for my opinion, Mr. Miller?

Q. As of the date of that instruction from Mr. Lackard, did you know of any reason personally, as the credit man in Los Angeles, why you should not be talking to Continental T.V. or its representatives? A. I did not know specific reasons as to why I should not be talking to them.

* * *

Testimony of James W. Hines

[1110] * * * Q. Now, what was the situation by 1965, Mr. Hines, regarding the product line in color television? A. We were producing more color and more models in 1965 than we were in '64.

Q. What would you say Sylvania's share of the market in your territory was in 1965? A. Exact percentage I don't recall. It was considerable though.

(Continued on next page.)

[1111] Q. All right. Can you give me an estimate? A. I would say between 10 and 14 percent.

Q. And most of that volume, most of that market share was attributable to the purchases made by your large volume dealer in the County of Sacramento, isn't that a fact? A. Yes.

Q. The name of that dealer was what, sir? A. Handy Andy.

Q. And who owned and still owns Handy Andy? A. Mr. Keith Anderson. He is the president of the organization.

Q. By the way, does Sylvania make any independent survey of their own as to market penetration? A. To my knowledge, no.

Q. And the information that you get, and you do get some market share information from time to time, do you? A. Yes.

Q. Is based upon the EIA, so-called County penetration report? A. Yes.

Q. Do you know of your own personal knowledge, sir, that those reports utilizing EIA data are not accurate? [1112] A. Not entirely accurate, no.

Q. And that's your personal opinion, is it not? A. That's my personal opinion.

Q. All right. Now, we talked something about the territory, your market share. Let me ask you some questions about the nature and extent of your dealers in your territory, Mr. Hines. Now, in answer to interrogatories questions under oath your company has stated that in 1961 approximately 19 dealers in Sacramento carried the Sylvania product. Of course, that was before your time; correct? A. I started in December of '61, yes.

Q. All right. In 1962 the number remained about 19 dealers. Do you recall that, sir? A. Not exactly, I don't recall it. That seems correct what you have there.

Q. All right, sir. In 1963 the SLD program was installed for all approved and franchised dealers in Sacramento; correct? A. Yes.

Q. That's the only way the factory dealt with dealers, correct? A. Yes.

Q. Factory direct? **[1113]** A. Yes.

Q. And if the dealer wanted to handle the Sylvania products in Sacramento that dealer had to conform to the SLD policies, correct? A. Yes.

Q. 1963, according to the interrogatory answers, Mr. Hines, the number of dealers dropped from 19 to 7. Do you recall that? I know this chart is a little small. A. It is.

Q. Let me read these to you: Handy Andy, J. W. Brewer, North American Appliance, North Sacramento T.V., Allied Builders Credit, Bank Furniture, Sacramento Employment Enterprise. Is that correct? A. I believe it is.

Q. All right, sir. The total purchases in 1963 for the year, $169,168 compared to the previous year total of $43,817. So, there was a substantial increase in purchases of Sylvania products in Sacramento in 1963. Do you recall that? A. Yes.

Q. Of that substantial increase, Mr. Anderson, Handy Andy purchased almost $97,000 worth. Do you recall that, sir? A. Vaguely, yes.

[1114] Q. All right. He was franchised in March, according to the interrogatory answers, of 1963. So, for nine months he produced purchases of almost $97,000, correct? A. Yes.

Q. Okay. Now, in 1964 the number of dealers went from 7 to 4. The fourth dealer, North American Appliance terminated early in 1964. So, by the middle of 1964 there were three dealers, Handy Andy, J. W. Brewer and Tri-State Sales in Sacramento handling Sylvania products, correct? A. Yes.

Q. Now, in that year Handy Andy purchased $245,619 worth of Sylvania products, quite a large volume, do you recall? A. Yes.

Q. The second dealer, J. W. Brewer purchased $34,000 for the year, and purchased only one color set. Mr. Hines, do you recall that? A. Yes.

Q. And, as a matter of fact, in addition to the fact that Brewer only purchased one color set, the Brewer Company sold retail all of their purchases outside the County of Sacramento. Do you recall that their shipments went to Bijou, California, and to Reno? **[1115]** A. Mostly at Lake Tahoe.

Q. Yes. A. Yes.

Q. And the third dealer, in 1964, purchased $535 worth of products for the year, one color set. You recall the extent of that dealer's purchases? A. Yes.

Q. All right. Now, 1965 we presumably still have those three dealers, Mr. Hines, Handy Andy, Brewer and Tri-State, and the interrogatory answers indicate that Handy Andy during that year purchased almost a million dollars in Sylvania products, $838,505. Very large volume, would you say? A. Yes.

Q. The second dealer in Sacramento purchased $11,290 for the year, the Brewer Company. Again, Mr. Hines, during 1965 the Brewer Company only purchased one color set. Handy Andy purchased hundreds and hundreds of color sets, correct? A. Yes.

Q. Tri-State in 1965 spent $327 with your company and didn't purchase one color set. Do you recall that? A. Yes.

Q. As a matter of fact, into 1966 both Brewer and Tri-State terminated their relationship with Sylvania; [1116] correct? A. Yes.

Q. So that by the middle of 1966, in fact, Handy Andy was the only T.V. and Appliance store in Sacramento handling Sylvania merchandise, correct? A. No. I believe Sherman and Clay had a branch. I am not sure of the year, but I believe that they did.

Q. Mr. Hines, let me show you the original answers to the interrogatories that are entitled "Continental T.V., Inc., First Interrogatories, Schedule 6, Interrogatory 6." And in answer to an interrogatory requesting the names, addresses and nature and extent of purchases of all dealers in Sacramento County our clients received those answers. Would you look through those pages and tell me if you can find any other dealers beside Handy Andy, Brewer and Tri-State in 1965?

Mr. Popofsky: Your Honor, we will stipulate that the answer does not contain a reference to Sherman and Clay. We prepared those in connection with the client's office in Batavia. The answer was not interpreted as covering branches. And for that reason branch operation such as Sherman and Clay do not appear in those answers. If those answers are in error they are in error to that extent. That was the interpretation given to the interrogatories. This witness did not participate in the preparation of the [1117] answer.

Mr. Miller: We accept the stipulation, Your Honor.

The Court: Very well.

* * *

Q. All right. So it appears, Mr. Hines, that from a high of 19 or so dealers in 1962 at the time that the SLD program was installed nationally until 1966, the number of dealers consistently decreased in Sacramento, correct? A. Yes.

Q. And it also appears that as the number of dealers decreased your total yearly sales actually increased, correct? A. Yes.

Q. And it appears that the factor which caused that to happen was Handy Andy, Mr. Keith Anderson's firm, correct? A. Yes.

Q. All right. Now, in 1964 we can see from the chart that Mr. Anderson purchased about a quarter of a million dollars for [1118] the year from Sylvania. In 1965 we can see from the chart that he purchased also a million dollars, four times what he had purchased the year before. Can you estimate for us, sir, the portion of your total territorial sales which Mr. Anderson accounted for in 1964? A. I would say it was in excess of 40 percent.

Q. So Mr. Anderson in 1964 purchased more than 40 percent of all sales made by your company in this geographic territory which you described originally? A. Which is my territory.

Q. Yes, sir. A. Yes; yes.

Q. Who was your next largest dealer in your territory, not in Sacramento but in your territory, in 1964? A. Statewide Appliance, Reno, Nevada.

Q. Statewide Appliance located in Reno, Nevada? A. Yes.

Q. All right. About how much territorial purchases were accounted for by that dealer? A. 10 percent or less.

Q. All right, sir. Did you have any other dealers that accounted for [1119] 10 percent or so of your territorial purchases beside this Reno dealer? A. I don't recall, Mr. Miller. I don't think so.

Q. Now, prior to 1962 and at a time when you had these 19 dealers in Sacramento, I think you have alluded to the fact that you did not use written franchise agreements? A. That's correct.

Q. So that about the time that you started with the company, I assume you went through some training program? A. Yes.

Q. And did Mr. Steiner become personally involved in your training? Did you spend time with him? A. I don't think so.

Q. Were you trained in Batavia? A. Yes.

Q. Did you talk to Mr. Theis, the president of the corporation? A. Yes.

Q. Did you talk to Mr. John Morgan, the vice president? A. Yes.

Q. And did you talk about the sales policies with those two gentlemen? A. Yes.

[1120] Q. This would have been back in 1962? A. Yes, or——

Q. Or early '63, correct? A. Yes.

Q. Now, as I understand the situation, Mr. Hines, prior to the SLD installation, prior to the use of these written franchise agreements, and prior to the SLD policy, Sylvania pretty much sold to any dealer who wished to purchase? A. Yes.

Q. Go down the street and if 10 wanted to purchase on the street, 10 purchased, right, sir? A. Yes.

Q. And prior to 1962, to your knowledge, sir, Sylvania did not tell any dealer that they had to seek any kind of approval before that dealer could open other locations, did the company? A. No.

Q. So when the Sylvania company went from the distributors as a distribution policy for products to the SLD, the factory direct method, that was the time that this written franchise was installed? A. Yes.

* * *

[1122] * * * Now, Mr. Hines, in franchising new dealers in 1962 you explained the elbow room policy to them, did you? A. In 1962?

Q. Yes, sir. A. Yes.

Q. All right, sir. And let me show you Exhibit C, which is another page [1123] or two from the sales manual, and refer you to page 2 of that set. The last paragraph is entitled "How Much Elbow Room Is There Really In Our Program. You use the following industry statistics as evidence of our limited number of dealer approach. Note: We give super elbow room, while elbow room is adequate to make the program a success."

Now, basically, you told and represented to dealers in 1963 this information contained on this page, did you not? A. Yes.

Q. All right, sir. Let me show you two more pages from your sales manual, sir, Exhibit F.

Mr. Hines, would you please try to keep your voice a little higher. I think we are having difficulty hearing you in the back.

Now, you will note, Mr. Hines, that first—the second paragraph—well, first paragraph says, "Sylvania

home entertainment products are only sold through franchised dealers."

The second paragraph says, "The franchise is not a meaningless paper that puts the dealer in a profit squeeze with weak competitors. The franchise is based on stability of direct factory relationship with a strong, straight-forward program of policy and understanding. The franchise contains **[1124]** a good profitable selling climate by creating elbow room in a sensible territory based on market and dealer potential 'same brands' competition is eliminated."

In substance, you told the dealers in 1963 that you franchised the information contained on this page; correct? A. Yes.

(Continued on next page.)

[1125] Q. All right. Going down the page, paragraph next, the last sentence in 2-A—strike that. 3-A:

"Financing: Sylvania offers the dealer the finest method of financing in this industry, the J. P. Maguire plan. This plan"—and then it says, "See Management Section Check List No. 19—" "This plan offers the easiest financial method of maintaining a representative display of the Sylvania product, a tremendous plus factor in our program."

You also represented to dealers, sir, when you solicited them for franchise, you represented the information in substance shown on that page that I have just read, correct? A. Yes.

Q. All right, sir, turning to the second page, first paragraph, first sentence, "Straight line distribution," are you with me, sir? A. Yes.

Q. "Straight line distribution is Sylvania's concept of the proper way to distribute and market products in the metropolitan markets." Skipping down to the first and second sentence of the next paragraph:

"SLD is designed for the present and for the future. It gives Sylvania better control of its distribution," et cetera.

[1126] Going down to the fourth paragraph:

"SLD also eliminates same brand competition," in quotes. "Sylvania wants fewer dealers and quality rather than quantity. By not overfranchising, straight line distribution eliminates vicious price cutting and establishes suggested go prices. That enables each dealer to make a fair profit and each consumer to receive an outstanding value."

Goes on to say, Mr. Hines:

"Elbow room gives every Sylvania dealer a geographic area in which to sell our Sylvania products. SLD does not promiscuously franchise dealers without first studying their size, location and effect on the market, as well as on other Sylvania dealers in the area. By franchising dealers by territory Sylvania becomes an important profit factor to its dealers."

Mr. Hines, in 1963, and indeed through 1965, is it not a fact that you represented in substance the information contained on this page of your sales manual to prospective dealers, sir? A. Yes.

Q. All right. And to your personal knowledge, the information which I have read to you from your sales manual [1127] is your understanding of your company's sales policies during the years 1963 through 1965? A. Yes.

Q. So it is a fact, is it not, that under this SLD program dealers are expected by Sylvania to adhere to certain suggested retail pricing? A. Yes.

Q. And is a fact, is it not, that a portion of the SLD policy is directed to encourage dealers to do so? A. Yes.

Q. Now, Mr. Hines, when is the first time that you were aware or heard that Continental T.V. ont of the Bay area was thinking about a proposed Sacramento location? A. I'm not sure, Mr. Miller. I believe it was in, let's see, spring of—spring or summer of 1965.

Q. All right, sir, in the spring of 1965. And from whom did you hear this information? A. I'm not certain, sir.

Q. All right. Let me see if I can refresh your recollection, sir. Page 66, Line 4:

"Q. When did you first become aware of the fact that Continental T.V. intended to open a store in Sacramento?

"A. Actually after they got here.

"Q. Well, isn't it true, Mr. Hines, that you [1128] had a conversation or heard a conversation in Chicago about this during the——

"A. Heard one prior to that, that they also were going to open up in Stockton. Stockton was

the primary target for the spring of 1965. That's what they were talking about opening up first.

"Q. Let's go back, then, a few years. I assume you know George Shahood.

"A. I know George Shahood.

"Q. When did you meet Mr. Shahood for the first time?

"A. In Chicago I believe I met him.

"Q. Approximately a year ago June of 1965?

"A. Yes.

"Q. Now prior to that time when did you first become aware of Continental T.V. as a Sylvania dealer, if in fact you did?

"A. I was aware of them about six months before, or nine months prior to that. I heard about them and volume of business they were doing, and so on.

"Q. And who advised you of this, do you recall? Page 67:

"A. Nobody advised me of it. I heard it in general conversation.

"Q. Do you recall who was generally conversing [1129] at that time?

"A. No.

"Q. But you say initially it was your understanding that their intent was to move into Stockton?

"A. That's correct.

"Q. From whom did you obtain this impression?

"A. Lee French and Don Carroll, if my memory serves me right.

"Q. When and where was this discussion?

"A. In general conversation, nothing specific—no specific meetings or anything like that.

"Q. Was it personally, not over the phone? It was with French and Carrol someplace?

"A. Could have been on the plane in our numerous trips back to the factory, or could have been down to a sales meeting that we had, regional sales meeting. I don't recall exactly where it was. I do recall however, that I did know of it.

"Q. Do you recall when this was, approximately?

"A. Oh, I would say the closest I could come to that would be the spring of 1965.

"Q. Was there any mention that—I may have missed this. Was there any mention at that time of Sacramento and Stockton, or just Stockton?"

[1130] Page 68:

"A. There was a mention of Sacramento at that time, but it was awfully hazy. There was nothing specific or concrete, no specific mention that they were definitely coming in, no target date set, anything like that."

Now, Mr. Hines, does that refresh your memory as to the fact that you talked to Mr. French and Mr. Carroll in the spring of 1965 concerning the possibility, the mere possibility at that time? A. Yes.

Q. Okay. Of course, when you had that discussion, as you pointed out in your deposition, you had heard of Continental T.V., correct? A. Yes.

Q. And you knew that they were an extremely large volume dealer for your company and the Bay Area? A. Yes.

Q. You knew they had a chain of stores at that time. A. Yes.

Q. Of course, in that discussion no mention was even made as to what side of town Continental may be proposing, nothing even that specific; is that right? A. No.

Q. So it is a fact, it was just a vague idea, **[1131]** impression you had that Continental may come to Sacramento? A. Yes.

Q. You didn't know what part of town, you didn't know what street they were thinking about, if any? A. No.

Q. You didn't know what their proximity might be in relation to Handy-Andy? A. No.

Q. Mr. Hines, in the spring of 1965, did you need more dealers in Sacramento, California. A. No.

Q. You did not, did you? A. No.

Q. As a matter of fact, sir, prior to the spring of 1965, Mr. Carroll, your immediate superior and regional sales manager, had informed you, had instructed you not to spend time to look for franchise dealers in the city and County of Sacramento, isn't that a correct statement? A. I don't recall, sir. It's possible.

Q. I'm sorry? A. It's possible. I have no knowledge of this.

Q. Is it not a fact, Mr. Hines, that you were not, in the spring of 1965, actively soliciting dealers in the

city and County of Sacramento to become franchise Sylvania dealers? **[1132]** A. That is the fact.

Q. And is it not a fact that that was the situation that existed in Sacramento from about the middle of 1963? A. Yes.

Q. And is it not a fact that that's the situation that existed throughout 1965 and through 1967? A. Yes.

Q. And is it not a fact that that's the situation that exists in Sacramento at the present time? A. Yes.

* * *

[1150] * * * Q. Let me see if I understand that, Mr. Hines. Are you telling me that because one or more of Continental stores were approved and franchised in the bay area that Continental T.V. could automatically go to Sacramento, for instance, without any pre-approval from yourself? A. I am not suggesting that Mr. Miller. I am stating that where there is a branch operation and there is a central buying office, normally, the franchise is handled out of the central buying office of whichever town that may be located in.

Q. Are you telling me that Mr. French himself would have authority and did in fact have authority to grant a franchise to Continental T.V. for the Sacramento location? A. He would have to take the franchise application, but he didn't have the authority, I don't believe, to grant it.

Q. You had the authority to grant it, did you not, Mr. Hines? A. Not entirely. To a certain respect

that is true. **[1151]** My views would have been considered in that.

Q. In conjunction with Mr. Carroll's views, correct? A. Yes.

Q. In other words, you and Mr. Carroll would jointly make that decision, correct? A. Yes.

Q. And—— A. With Mr. French calling on the main office.

Q. That is because of the inter territorial aspect? A. Yes.

Q. And that is in fact the way it worked at the time the Sacramento store was opened, correct? A. Correct.

* * *

[1167] * * * Q. All right. Now, what happened to the demand for color merchandise **[1168]** commencing in August, approximately, of 1965? A. It had increased at a great rate.

Q. And had there been a rather steady increase through 1965? A. I would say from August of '65 on it was a tremendous increase over any months prior to that in '65.

Q. Now, you have been in this business, in this industry several years. Was it not an unprecedented demand? A. It was.

Q. Industry had not seen anything like it previously? A. Never.

Q. And you haven't experienced anything like it since, have you? A. Never.

Q. Probably never will. Now, again, as a person that's worked for years in this business, to what did

you attribute this unprecedented demand for color sets commencing about August of 1965, September of 1965? A. The demand was because all networks suddenly announced they were going to have almost complete color for the fall. And in their announcement of it, everybody, every consumer who didn't have color seemed to want color.

[1169] Q. Was it your understanding that this condition prevailed in your territory, commencing about that time? A. Yes, it definitely did, yes.

Q. Was it your understanding that that condition prevailed in the other markets in Northern California? A. Yes.

Q. And indeed in the industry in general? A. Yes.

Q. Now, as I understand it, all the dealers in your territory were put on factory allocation at some point in time? A. Yes.

Q. Sorry, Mr. Hines? A. Yes.

Q. And I assume that Handy Andy was put on allocation also, is that correct? A. Yes.

Q. Now, do you recall the first allocation period, Mr. Hines? A. I believe it was September of 1965.

Q. All right. A. It could have been earlier. I am not sure.

Q. So, for a period commencing about September, 1965 through the end of 1965, color merchandise was so much in demand that Sylvania allocated a number of color sets **[1170]** dealers could purchase, correct? A. This is correct.

Q. All right. And, as I understand it, this allocation procedure by Sylvania continued through 1966, is that so? A. Yes.

Q. And the information we have received from your company in interrogatory form indicates that at least through November of 1966 the factory continued to allocate color sets. Is that your recollection? A. Yes.

Q. I note here that Handy Andy was estimated by the factory at the end of 1965 to be a potential one point five million dollar purchaser the next year. How close did Mr. Anderson come to purchasing that estimate of one point five million dollars in Sylvania products during 1966, sir? A. I believe that Mr. Anderson exceeded a million dollars. I am not quite certain, though, Mr. Miller.

* * *

[1174] * * * Q. You know of your own knowledge that Mr. Anderson does not attempt to reach a volume market outside of the City and County of Sacramento, don't you? A. Yes.

Q. Have you heard of a dealer in San Francisco who sold in volume any brand of television set in your Sacramento territory? A. No.

Q. And the reason for this, Mr. Hines, is it not, that in the television—retail television business, as you well know, it is simply economically practical for a dealer to try to attract a volume consumer clientele over those distances. A. This is correct.

* * *

[1180] * * * Q. During the course of your conversation with Mr. Shahood, did he say anything about Sylvania or his plans concerning Sylvania? A. Yes.

Q. What did he say, sir? A. I believe Mr. Shahood said that he was cutting down on Sylvania merchandise at that particular time.

Q. Did he say anything else about his attitude towards Sylvania? A. He was also irritated at Sylvania.

Q. Did he express to you any reason why he was irritated with Sylvania? This is August, 1965. A. I believe it stems from the June Chicago meeting.

Q. All right, sir. With respect to Handy-Andy, did you at any time make any commitment to Handy-Andy with [1181] respect to the subject of franchising in the Sacramento area? A. No.

Q. Did you make any promise to Handy-Andy concerning his opportunity, if any, to review your franchising plans? A. No.

Q. Did you ever talk to Mr. Anderson or anybody—Mr. Anderson about Continental T.V.? A. Other than in August of 1965, when Mr. Shahood and Mr. Anderson and myself and one of the Philco representatives were together, that's it.

Q. What was said by Mr. Anderson in that regard, as best you can recall? A. I don't recall what it was.

Q. Did Mr. Anderson at any time complain to you personally about the presence of Continental T.V. in Sacramento? A. No.

Q. What percentage, if you know, in or about 1965, of Mr. Anderson's sales at Handy-Andy, were

represented by Sylvania? A. You're speaking of in relation to the other lines that——

Q. That Handy-Andy carried. A. I would say that 1965 his Sylvania percentage [1182] was in excess of 40 to 50 percent of all merchandise he handled.

Q. What other lines did he handle, if you know? A. RCA, General Electric.

Q. In operating the elbow room policy, did you object at any time to Mr. Anderson or anyone else about handling other lines. A. No.

Q. In operating the elbow room policy, sir, in your area, did you give any instructions or make any representations to your dealers concerning the territories into which they might sell? A. No.

Q. How far incidentally is Roseville away from Sacramento? A. Approximately fifteen miles.

Q. Fifteen miles? A. Hm-hum.

Q. How far is Woodland from Sacramento? A. About twenty miles.

Q. About twenty miles. Did you have dealers in Roseville and Woodland in the year 1965? A. I think I did, yes.

Q. Approximately how many dealers were there, that is to say, retail establishments that sold television sets [1183] to general consumers in the Greater Sacramento area in the year 1965? A. That sold retail, approximately three.

Q. That's Sylvania. How many were there of all brands? A. Approximately one hundred.

Q. From your observation, sir, were most of the major brands represented in Sacramento in 1965? A. Yes.

Q. In one dealer or more—one of the retail outlets, that is to say. A. Yes.

Q. Did you at any time ever promise any of your dealers that you would not franchise a competing dealer in their general trade area? A. No.

* * *

[1185] * * * Q. How far would you say, Mr. Hines, the Continental Sacramento store was located from the Handy-Andy store? A. Less than ten blocks.

Q. Were these stores on the same street? A. Yes.

Q. On the same side of the street? A. Yes.

Q. You estimate that there are 100—or there were 100 TV retail stores in Sacramento handling all brands in 1965. A. Yes.

Q. How many of those stores handled RCA, would you estimate, in 1965? A. I would say at least forty to fifty percent of them, if not more.

Q. So out of a hundred, forty or fifty of those dealers would carry RCA? A. Yes.

Q. And if I were a customer in Sacramento in 1965, and I desired to buy an RCA brand, I could go to either forty **[1186]** or fifty locations in Sacramento and look at the display, talk to the dealer about prices and selection, right? A. Yes, if not that, even more dealers than that.

Q. Right. But if I, as a customer in 1965, desired to buy a Sylvania brand, I had to go talk to Mr. Keith Anderson at Handy-Andy, did I not? A. Or

Sherman and Clay, which was a branch outlet store. Yes, this is so.

Q. And I had to accept, if I wanted that Sylvania brand product, I had to accept Mr. Anderson's displays, his merchandising line and his prices, or drive out of the Sacramento area and look elsewhere, correct? A. With the exception of the branches that were there of Sherman and Clay, this is correct.

* * *

Testimony of Thomas J. Lea

[1317] * * * "Q. What is the primary business of John P. Maguire Company?

"A. We are in the general finance business. Our most important and largest operation is factoring.

"Q. It would be factoring accounts receivable for organizations?

"A. Factor purchases, accounts receivable outright without recourse, among other things, make loans against inventory and other collateral."

* * *

"Q. Going back to 1962, when you negotiated the relationship with Sylvania, what, basically, were the terms of your agreement with Sylvania, as far as flooring?

"A. Well, it's a contractual agreement whereby we undertake to service their floor plan operation to their dealers. It is a final recourse arrangement to **[1318]** Sylvania. Our functions are primarily to handle the refiling and recording, to do the field auditing, to do the collection.

* * *

"Q. Has there been any other contract or contracts since 1962?

"A. That contract was revised in the spring of 1965"

* * *

"Q. You mentioned the agreement with Sylvania. I take it it's still the same, a full recourse?

"A. That is correct.

"Q. In other words, if a dealer did not pay, or otherwise did not fulfil its obligations, Sylvania would in effect indemnify you against any loss?

"A. That is correct.

"Q. Do you have any obligation under this agreement to repossess merchandise?

"A. Yes, we do."

* * *

"Q. Mr. Lee, what obligation does Maguire have under this contractual arrangement relationship prior to Sylvania's making full payment or indemnification to Maguire, in the event of default by a dealer?

"A. In the case of default by the dealer, Sylvania **[1319]** is put on notice of the complete status of the transaction, and if repossession is desired, by them, we perform it at their request."

* * *

"Q. Mr. Lee, since 1962, have you had regular contact with any Sylvania personnel regarding the floor plan accounts?

"A. Yes, I have.

"Q. With whom do you deal at Sylvania?

"A. Principally with Mr. Lockard. We have also had rather close association with Mr. Callahan and Mr. Rivers."

* * *

[1341] * * * "Q. Mr. Lea, Mr. Allen had advised you in his prior letter as to the method of computation of maturities by Continental. And your reply was that his understanding was incorrect. You say: 'the plan provides that you shall have a free four month period from invoice date.'

"What part of the plan provides that, Mr. Lea?

"A. Well, the plan itself provides that, that computations are from the date of the invoice. I have explained to you several times, it's a trade practice——

"Q. In fact, Mr. Lea, right here today you can't tell me anywhere in writing that it tells the dealer how to compute maturities?

"A. No, I cannot.

"Q. It is a trade practice, that's your answer?

"A. That's my answer."

* * *

"Q. Who told you to file suit on behalf of Maguire?

[1342] "A. Well, nobody told us. We took a joint action which, at the request of Sylvania—I mean after discussion with them.

"Q. Mr. Lockhart again discussed it with you?

"A. Mr. Lockhart discussed it with me."

* * *

[1345] * * * Mr. Miller: Next we would offer Exhibit C-F which is a telegram. I would like to read that into the record. It is dated September 22—same date as Mr. Lea's letter—1965. It purports to be a wire from Continental TV to Maguire Company.

"Attention Don Pedlow, 1290 Avenue of the Americas, New York.

"A variance in status of our account with Sylvania maturity dates do not check with our records and merchandise we have returned as far back as 6 months ago **[1346]** are still being carried on trust receipts. Have made repeated attempts to discuss this with Sylvania's credit department in Los Angeles but without result. Are withholding all future payments until these points are cleared up.

"George M. Shahood, Continental TV, Inc."

[Continued next page. Nothing omitted.]

[1347] We would offer CF, Your Honor, as the Claimant's next as marked.

* * *

The Clerk: CF introduced and admitted in evidence.

Mr. Miller: Next, Your Honor, in connection with Mr. Lea's deposition, I would like to read Exhibit EM into the record.

This exhibit is a letter dated September 24, 1965 to Mr. Lea from Mr. Webster F. Allen, vice president of Continental T.V., Incorporated.

"Dear Mr. Lea:

"We have for the past two weeks made continual attempts to contact Mr. Ken Lopolito of

Sylvania's credit department in Los Angeles. Mr. Lopolito has refused to talk to us, return our calls, or engage in any communication with us.

"There is a discrepancy on our account regarding dates of maturity. Your records reflect the dates merchandise was invoiced to us. Our records reflect the dates merchandise was received by us. The dates vary from 10 days to two weeks later than the date of the IBM maturity. It is our understanding and has always been our understanding **[1348]** that under the flooring plan we have four months free flooring from time of delivery, and two months extension.

"Under the outline of Mr. Lea Lockard's letter of June 21, 1965, he granted us one week grace period in order to process the papers from our various stores. Mr. Lockard understood our position regarding payment for merchandise as soon as it left our floor.

"We are sure the interest charges on all items of maturity reflect from the date of your records and not from the date merchandise was received. Also the statement contains interest charges on damaged merchandise which was picked up by the various freight carriers months ago. We have made every attempt at getting this discrepancy reconciled to no avail.

"We have been told that the credit department in Los Angeles has been advised by Mr. Lockard not to talk to anyone from Continental T.V. Our account is still active under someone from Ma-

guire Company and Sylvania comes into our Santa Clara store and meets with our Internal Inventory Accountant and reconciles this matter.

"Concerning the matter of damaged merchandise **[1349]** being picked up, notification was given to your representative on the occasion of the monthly floor check and notations were made in his monthly report to your company. We have records in our files to substantiate this.

"Therefore, in reference to our previous telegram regarding our account and returned items, no further checks will be forthcoming until the representatives from Sylvania and Maguire Company give justification to the reduction of our credit line to $50,000 and reason for the reduction has been given to us.

"On our previous 12 or 13 floor checks there has never been any unpaid items out of trust, there has never been a time that we have failed to meet our obligations on maturities.

"We will await your reply regarding our differences and trust that an early resolution to our problems will be forthcoming.

"Very truly yours,

"Webster F. Allen."

Copies sent to Mr. Pedlow of the Maguire Company and Mr. Lockard controller of the Sylvania Company.

We would offer this EM, Your Honor, as Claimant's next as marked.

[1350] * * * The Clerk: Exhibit EM introduced and admitted into evidence.

(Claimant's Exhibit EM marked and received into evidence.)

* * *

Testimony of George N. Shahood

[1424] * * * Q. Now, how long did you work for Mr. Hackett's firms, sir? A. Until November of 1960.

Q. All right. What happened at that time? A. Mr. Hackett and myself opened a store in Santa Clara, a Muntz T.V. store.

Q. And what was the address of that store? A. 177 West Santa Clara Street.

Q. And was that store operated under Mr. Hackett's corporation? A. No, sir.

Q. Was there a new corporation? A. Yes. A new corporation was formed.

Q. What was the name of that corporation. A. Continental T.V., Incorporated.

Q. Do you remember when that corporation was organized, sir? A. Yes, sir.

Q. When was it? A. November, 1960.

Q. And who were the shareholders in that corporation **[1425]** originally? A. Mr. and Mrs. Leroy Hackett, and my wife, Margarita.

Q. All right. And it was a Muntz dealer? A. Yes, sir.

Q. Did you handle any other brands, initially? A. No, sir.

Q. And you had one location, did you. A. Yes, sir.

Q. Now, did Mr. Hackett continue to be active in that corporation from that time on? A. Just to the point where he was supplying us merchandise from his operation in San Francisco.

Q. I see. Mr. Hackett dealt with the manufacture of Muntz? A. Yes, sir.

Q. And what were your primary duties originally in Continental T.V.? A. I was general manager.

Q. All right. Now, did Mr. Hackett stay with Continental T.V.? A. No, sir.

Q. When did he leave? A. In February, 1961.

[1426] Q. And why did he leave? A. He was having problems in his own corporation. He was contributing nothing to Continental T.V., Incorporated. It was a constant drain in our corporation, and we offered to buy him out.

Q. All right. And did you in fact purchase Mr. Hackett's shares? A. Yes, sir.

Q. And after, did you say February, 1961? A. Yes, sir, late February, I believe.

Q. After that date did you and your family substantially own all of the stock of Continental T.V., Incorporated? A. Yes, sir.

Q. All right. Now, by the way, in those days did you have a business lawyer? A. Yes, sir.

Q. And who was he? A. Mr. Sidney Rudy.

The Reporter: Rudy or Ruby?

The Witness: R-u-d-y.

Mr. Miller: Q. One of the attorneys associated in this action? A. Yes, sir.

[1427] Q. All right. Now, in 1960-61, Mr. Shahood, would you describe the premises that this corporation operated from 177 West Santa Clara Street in San Jose? A. It was a relatively small store.

Q. Excuse me. What would you say the frontage was? A. Approximately 20 feet.

Q. How deep would you say it was? A. Approximately 90 feet.

Q. Excuse me. Go ahead. A. It was 1800 square feet. It was a very small store.

Q. How many salesmen did the company employ at that time? A. Full-time two, and myself and Mr. Greco, and we had one or two men that came in on a part-time basis, I believe.

Q. You worked personally as a salesman? A. Yes, sir.

(Continued on next page.)

[1428] Q. What were the store hours? A. From nine in the morning 'til nine at night.

Q. How many days a week was the store open? A. Seven days.

Q. And during the period 1960 to 1963, how many hours a day would you say you personally gave to this business? A. Approximately 14 hours a day.

Q. How many days a week? A. Seven days a week.

Q. All right. Now, how many trucks did this company have in 1960 and '61? A. One.

Q. Delivery purpose? A. Yes sir.

Q. Did your company, your store in those days handle any color television products? A. No sir.

Q. Was there any color market in those days. A. No sir.

Q. All right. During the years 1961 until let's say the middle of 1964, Mr. Shahood, did your corporation, Continental TV, Inc. open any other stores, any other locations? A. Yes, we did.

[1429] Q. Would you tell us about that? A. Yes. Periodically we would rent small showroom type stores in the proximity of our central store. They were very small stores——

Q. What was the idea of that? A. Primarily the basis for our salesmen to operate from, where they could stay in that particular area, bring people in to show them the merchandise.

Q. Did you have personnel to run those locations? A. No sir.

Q. And did you add product lines, different brands? A. No sir.

Q. Still Muntz brand? A. Yes sir.

Q. Were those permanent locations? A. No sir.

Q. How long would you say on an average those locations remained open? A. Three to six months.

Q. And why were they closed? A. We didn't have financial resources to keep them open. We didn't have product or money to support them.

Q. Now, during those years, 1961 through 1964, did you personally have a desire to grow, to have a chain of stores? A. No sir.

[1430] Q. Why is that? A. We knew our limitations. We were a very small business. We had very limited capital, very limited personnel.

Q. Now, you have mentioned your basic product during those years was Muntz. A. Yes.

Q. Would you tell us the terms upon which you purchased Muntz from the factory at that time? A. Initially they were sent to us in what amounted to a COD basis.

Q. You had to pay for them when you received them? A. Yes sir.

Q. Did that arrangement change at any time while you were dealing with Muntz? A. Yes.

Q. What other arrangement was given? A. After we had been dealing with them a number of months, they changed that to a net 10 basis, and in some cases a net 30 basis.

Q. And what did those terms mean? A. Net 10 meant that you paid for the purchases of one month on the 10th of the following month. Net 30 meant you paid for them 30 days after you received the merchandise.

Q. Did the Muntz factory ever extend any lengthy credit terms to Continental? [1431] A. No sir.

Q. Now, during the years 1961 through 1964, Mr. Shahood, other than the relationship as it developed with Sylvania, did your company handle any other brands other than Muntz? A. Yes sir.

Q. What other brands did you have? A. We handled Dumont television and stereo, and Emerson television and stereo.

Q. All right. From whom did you purchase Dumont? A. From Kemper and Barrett.

Q. Where are located? A. In San Francisco.

Q. And what type of firm are they? A. They're a local distributor.

Q. And did this Kemper and Barrett company, did they extend your company credit? A. Yes sir.

Q. And what terms did you purchase. A. They extended us $10,000 worth of credit and the terms were 30, 60, 90.

Q. Now, did you have Dumont product on your floor prior to your introduction to the Sylvania line? A. Yes sir.

Q. And was your credit line at any time prior to [1432] meeting Mr. French higher than $10,000 with Kemper and Barrett? A. No sir.

Q. You mentioned I think Emerson products? A. Yes sir.

Q. From whom did you purchase that brand? A. Emerson West Coast Distributors.

Q. Where were they located? A. In San Francisco.

Q. And upon what terms did you purchase that product? A. Same terms as Kemper and Barrett, 30, 60, 90.

Q. All right. And do you know what your credit line, if any, was with that company? A. Yes sir.

Q. What was it? A. $10,000.

Q. And did it ever rise above that prior to your Sylvania relationship? A. No sir.

Q. All right. Did you mention Motorola products? I believe you did. Did you have Motorola brands sometime in 1974? A. Yes sir.

Q. Where did you purchase that product? A. From W. G. Lancaster Company.

[1433] Q. And what is that company? A. Distributors of Motorola and Norge products in San Francisco.

Q. Now, prior to July of 1964, Mr. Shahood, did your company lodge any wholesale floor financing for any product? A. No sir.

Q. Had you had any personal experience with any floor financing programs with anybody else's business? A. No sir.

Q. All right. Now, I'd like you to tell us briefly about the manner of retail sales, the manner in which you made retail sales during the years 1961 through 1963. A. We made them dually. We advertised in local newspapers and over the radio that we would make home demonstrations, and home demonstrations were available to customers who didn't want to come in the store. They would call up and then we would send out a sales representative to their home with merchandise and brochures. A small percentage——

Q. May I stop you there for a moment. If a customer phoned in and requested that service, as I understand it you would take a catalog and a salesman would go to the home of that customer? A. We would take a catalog and many times a television set.

[1434] Q. If a customer wanted to see the merchandise in their home, would your company—— A. Yes.

Q. ——take the merchandise—— A. We would take it out to them and demonstrate it in their home.

Q. I'm sorry I interrupted you. Go ahead. A. Some sales were made in the store also.

Q. Now, did you sell to the consumer on credit—— A. Yes.

Q. ——in those days? A. Yes sir.

Q. And did you start out initially doing credit consumer business? A. Yes sir. The majority of our business was credit business.

Q. Would you explain how that works in your business? A. We would offer terms to the customer in our advertising. We would make our demonstration, a salesman would—either in the store or in the home would offer them terms, if they so desired. We would take a credit application, write up conditional sales contract for the amount owed over a period of time, we would then submit the credit application to our financing institution. If they approved the credit, we would then **[1435]** deliver the television set and sell the contract to the financial institution and get the funds.

Q. Was the bulk of Continental's business during those three years done on credit—— A. Yes sir.

Q. With the consumer? A. Yes sir.

Q. All right. Now, what financial institutions had you used from 1960 to 1963 when you dealt in selling consumer contracts? A. Crocker Citizens Bank, Century Acceptance and Pacific Finance.

Q. All right. Now, why was it that you dealt with finance companies and also with banks for that purpose? A. Well, banks were always preferable because they offered better terms both for Continental and—Continental TV and the customer. The finance company offered less desirable terms, but they were much more lenient in their credit demands.

Q. O.K. Let's see, you said the customer preferred the bank over the finance company also? A. Yes sir.

Q. Do you know why that was? A. Well, they just had a preference to deal with banks, **[1436]** the connotation of a bank was superior to a finance company.

Q. And you mentioned that the terms were better for Continental TV from the bank than from the typical finance company. A. Yes sir.

Q. Would you explain that? A. Yes sir. We participated in the interest charges made to the customer, and we would get a larger portion of those charges from the banks than from the finance companies.

Q. All right. Now, what banks did you use in early 1960? A. I initially started with United California Bank. We dealt with them briefly, then we transferred our account to Crocker Citizens. We also dealt with Century Acceptance and Pacific Finance.

Q. Both of the latter two were—— A. Finance companies.

Q. Finance companies. All right. Now, prior to 1964, Mr. Shahood, did your company in fact borrow from banks for capital purposes? A. No sir.

Q. Did you personally borrow commercial loans to be used by your company for any purpose? A. From banks?

Q. Yes sir. **[1437]** A. No sir.

Q. Now, do you recall generally speaking when you started your relationship—when your company started its relationship with Crocker Citizens National Bank? A. Yes sir.

Q. And what year was that, sir? A. In 19— late 1961.

Q. And after that date, did your company have certain dealings with Crocker Citizens? A. Yes sir.

Q. Would you describe the nature and extent briefly of those dealings? A. We held our commercial account there, and we discounted contracts with them, sold contracts with them under their bank-away plan.

Q. You call that the bank-away—— A. Bank-Away plan. That was the term they used for their commercial—their retail financing. We also made loans for vehicles and furniture.

Q. Now, did you borrow money from the bank when you opened—you refurbished and opened up your main office in Stevens Creek? A. Yes.

Q. And which bank? A. Crocker Citizens.

[1438] Q. Do you recall the extent of that loan? A. Yes sir.

Q. How much was that? A. $80,000.

Q. And what year was that given? A. That was in 1964.

Q. All right. Now, in 1964, did your company have any commercial loans with Crocker Citizens? A. Early part of 1964?

Q. Yes. A. Not in the early part.

Q. How about later in 1964? A. Yes sir.

Q. Do you recall the extent of that? A. We borrowed $10,000 on a capital loan.

Q. Was that repaid as agreed? A. Yes sir.

Q. And did you ever have any wholesale financing line with Crocker Citizens? A. Yes sir, late in 1964.

Q. Was it after or before the Maguire plan was accepted? A. After the Maguire plan was accepted.

Q. All right. And what was the line of credit with Crocker Citizens Bank instituted for Continental TV? A. Purchasing products from Kemper and Barrett Distri- [1439] butors.

Q. And what was the amount of the line? A. $30,000.

Q. Now, through the years that Continental TV, Inc., and its affiliates were in business and are in business, has any bank refused to discount Continental's consumer paper, at least prior to October of 1965? A. No sir.

Q. Now, do you recall when you first were introduced to the Sylvania people? A. Yes sir.

Q. At about when was that? A. That was in March of 1964.

Q. Could you describe the circumstances of that first meeting? A. Yes. I had just previously leased the premises in San Leandro. The products I bought with the leasing of the merchandise (sic) were primarily Curtis Mathis. There was a Curtis Mathis dealer in the neighboring town of Hayward, and I stopped in to look at his line and ask some questions about Curtis Mathis, and there I met Lee French.

* * *

[1450] * * * Q. Mr. Shahood, after Continental T.V., Inc., undertook the Sylvania line, sir, did it continue the same promotional method of selling that it had used until that time? A. Yes, sir.

Q. Did it continue the same line of advertising to attract customers that it had used previously? A. Yes, sir.

Q. Now, in Continental T.V.'s experience, did you have any rule of thumb as one of the management personnel as to how large a market area each of your stores could cover, sir? A. Yes, sir.

Q. Would you tell us about that. A. Approximately within a 25-mile radius of our location.

Q. Now, was that your personal opinion? A. It was the opinion of our management.

Q. And also your own? **[1451]** A. Yes, sir.

Q. Had any of your stores in 1964 attempted to attract customers through advertising or whatever at a greater distance from the store than 25 miles or so? A. No, sir.

Q. Mr. Shahood, at any time in 1964-1965 or for that matter thereafter, did any of your chain of stores sell in volume to customers located more than 25 or 30 miles away from the store location? A. No, sir.

Q. Why not? A. It was economically impractical to do so.

Q. Would you explain that. A. Yes, the cost of the salesman going out to that distance, delivery, and there are extensive costs in servicing television sets that were sold at distances greater than this, and economically it just wasn't good business.

Q. Do you have any personal knowledge as to the effective radius from a practical standpoint where the majority of your sales occurred? A. Yes.

Q. Would you tell us about that. A. It is within a ten-mile radius of the location.

Q. How did you determine that? **[1452]** A. We made studies from time to time utilizing maps and the locations of the sales from our particular facilities.

Q. Now, at some point in time we understood that Continental T.V., Inc., did accept the Maguire financing plan. Do you recall that? A. Yes.

Q. Did Mr. French after the Berkeley convention in 1964, after that time, did he talk to you subsequently about the use of the Maguire plan? A. Yes, sir, he did.

Q. Can you tell us to the best of your present recollection what he said. A. He solicited us on this plan continuously, telling us that if we utilized this plan we would be able to expand in our market, that we would be able to buy in larger volumes that we would get better pricing, earn discounts on our purchases.

Q. Do you recall about when it was that Continental T.V., Inc., accepted the Maguire plan? A. Yes, sir.

Q. When was that? A. The middle of July 1964.

Q. Did you personally sign the Maguire plan documents on behalf of Continental T.V.? A. Yes, sir.

[1453] Q. Now, did Mr. French at or near the time that you signed these documents, did he say anything to you about the terms of the Maguire plan? A. Yes, sir.

Q. Would you tell us as best you now recall it what Mr. French said about that subject. A. Yes. He

said that we would be able to have the merchandise in our locations for a period of four months with no charge, no flooring charges, and that that would be two additional months at a small interest charge for keeping the merchandise. We would be entitled to two 30-day renewals after the four-month period. At the end of six months we would have to pay for the merchandise if we still had it.

Q. Okay. Now, did you have any discussions with any of your personnel respecting the terms as you understood them? A. Yes.

Q. Who did you talk to? A. Mr. Savage, our internal bookkeeper.

Q. Cal Savage? A. Yes.

Q. What did you instruct or tell Mr. Savage? A. I told him to set up our books. We used the ABC [1454] card system. We used the C cards to reflect that we received the merchandise, and he set up his books so that we would know the aging of the merchandise from the day we received it.

Q. All right. Now, to your personal knowledge, Mr. Shahood, did Continental T.V. consistently date the maturities using that method from that time until the termination of your company by Sylvania? A. Yes, sir.

Q. Did anybody from Sylvania at any time ever tell you personally that you were dating the maturities, your company was dating the maturities improperly? A. No.

Q. Did anybody from the Maguire Company ever tell you that? A. No.

Q. Now, at some point in time did you meet Mr. Pedlow, the vice-president of Maguire Company? A. Yes.

Q. Do you recall about when that was? A. It was a short period of time after we accepted the Maguire plan. I don't know the exact date.

Q. Sometime in 1964? A. Yes.

Q. What did you understand the purpose of his visit [1455] to be, sir? A. Primarily public relations, to meet our people, to look over our system.

Q. And which facility did Mr. Pedlow visit? A. The store at 3585 Stevens Creek Boulevard.

Q. That was your main office at that time? A. Yes.

Q. And to your personal knowledge, what did Mr. Pedlow do while he was there? A. He spent some time with me and he spent some time with Mr. Savage going over our inventory control system and our methods of remittance to Maguire and how we had set them up.

Q. Did Mr. Pedlow make any comment to you of any kind about Continental T.V.'s procedures? A. Not that I recall.

Q. Any complaints? A. No, sir.

* * *

[1460] * * * Q. Now, do you recall when Continental T.V. San Francisco store was opened? A. Yes.

Q. When was that? A. In September of 1964.

Q. Did the fact that Continental T.V. finally accepted the Maguire plan have any influence on the

entry into the San Francisco market? A. Yes, it did.

Q. Would you explain that? A. Initially we intended to go into San Francisco with a small showroom type store much like the one in San Leandro, approximately 2,000 square feet, with a small display of merchandise and two or three salesmen. With the acceptance of the Maguire plan a large volume of merchandise would be made available to us for display, we re-evaluated our plans for San Francisco and leased a large facility on Geary Street, approximately 6,000 square feet, much with the same type of display space and showroom space, service **[1461]** facility, office facility that we had in Santa Clara.

Q. All right, sir. Did Continental T.V., Inc. open that store? A. No, sir.

Q. Who was the owner and operator of that store, sir? A. A corporation called A & G Sales.

Q. Did A & G Sales purchase or lease the premises? A. A & G Sales leased the premises.

Q. Now, why was a separate corporation utilized in that way? A. Different principles were involved. The other members of my family invested and bought stock in this corporation.

Q. Who were they, sir? A. My brother-in-law and my sister.

* * *

[1463] * * * Q. By this time in the fall of 1964, had you had general discussions with anybody in Sylvania about expansion in California? A. Yes.

Q. Who did you talk to generally about expansion of your chain? A. Mr. French and Mr. Carroll.

Q. Will you tell me first what the market areas were discussed with those two gentlemen? A. We discussed most of the major market areas in Northern California.

Q. Can you give us an idea of the city market areas by name? A. Oakland, Fremont, Salinas, Fresno, Stockton, Sacramento.

[Continued on next page; nothing omitted.]

[1464] Q. All right. What did Mr. Carroll say in general about the concept of expansion? A. He was in favor of the expansion. There were areas that he told me Sylvania needed help in.

Q. Did he say anything at that time about Sacramento? A. I don't recall.

Q. Mr. French, did he say anything in particular about this subject? A. I don't recall.

Q. All right. Was there any discussion in 1964 about possible expansion into the Los Angeles markets? A. I don't recall whether it was '64 or '65.

Q. All right. Do you recall that in 1964 some time you met Mr. Callahan? A. Yes, sir.

Q. Do you recall about when that was? A. The middle of November of 1964.

Q. All right. What was your understanding of the purpose of his visit? A. My understanding was that he came out to meet our people. Look over our operation and make a general **[1465]** survey of Continental T.V., Incorporated and its people.

Q. Did you have a discussion with him on that occasion? A. Yes, sir.

Q. What subjects were discussed, Mr. Shahood? A. Our credit lines, our method of remittance, our

inventory control systems. And we also discussed the float that Continental was utilizing in paying—making remittances to Maguire.

Q. All right. Let's make the first. I think you mentioned the credit line. What did Mr. Callahan say about the credit line? A. Well, he said that Lois Barnes had, to the best of my recollection, had raised it to 200,000, and he came out to see why. And we went into it a little bit. We discussed volume and expansion and the amount of business we were doing at the time, and Mr. Callahan felt that a $200,000 credit line wasn't adequate for our needs at that time, and he raised it to 300,000.

Q. On that occasion? A. Yes, sir.

* * *

[1508] * * * Q. Mr. Shahood, we understand you attended the Chicago convention given by Sylvania? A. Yes, sir.

[1509] Q. Prior to leaving for that convention did you have any plans to go to the Philco convention? A. Yes.

Q. And did you intend to do so before you left for Chicago? A. Yes.

Q. Now, you attended, I believe, a credit meeting while in Chicago? A. Yes.

Q. Who was present, to the best of your recollection, from Sylvania? A. Mr. Lockard, Mr. Callahan, Mr. Rivers, Mr. Lopolito, Mr. Carroll.

Q. All right, sir. And was there anyone present from the Maguire Company? A. Mr. Don Pedlow.

Q. Now, would you tell us, to the best of your

recollection, the subjects discussed, please? A. Yes. Continental T.V.'s credit line, their method of payment, the extensions and maturities, the advertising credits that were due us, damaged merchandise, and the lock box in San Francisco, and floor checks.

Q. All right, sir. And sometime after the Chicago credit meeting did [1510] you receive a letter from Mr. Lockard? A. Yes.

Q. Let me show you Exhibit BG and ask you if you recognize that, being a cover letter to yourself and having attached three or four page letter from Mr. Lockard directed to Mr. Pedlow? A. Yes, sir.

Q. All right, sir. Now, in this letter Mr. Lockard tells Mr. Pedlow of, number one, the extensions which he granted to Continental T.V. on 60 color T.V. sets; is that right? A. Yes, sir.

Q. Number two, he makes an arrangement for maturity payments. And would you tell us what he says, in substance? A. In substance he said that teh maturity that occurred up to June 1st of that year would be paid on June 22nd, and that any maturities that occurred during the month of June after June 1st would be paid on July 22nd.

Q. All right, sir. And, to your knowledge, did Continental T.V., Incorporated, comply with that payment schedule for maturities? A. Yes, sir.

Q. Now, Mr. Lockard tells Mr. Pedlow also that [1511] Maguire should not schedule audits on the day after a weekend or the day after a holiday. That's point 3, correct? A. Yes, sir.

Q. And that was discussed at the meeting? A. Yes.

Q. And point 4 is that Continental T.V. will commence using the lock box in San Francisco? A. Yes, sir.

Q. And, as a matter of fact, to your personal knowledge, did Continental T.V. thereafter use the lock box? A. Yes, sir.

Q. And, consistently? A. Yes.

Q. Now, point 5 is an agreement regarding the SAU schedule? A. Yes.

Q. All right. Would you explain to us what you understood that arrangement to be? A. That Continental T.V. would remit to Maguire for items sold, transactions completed on a Friday through the Friday of the previous week.

Q. So that transactions occurring until one Friday [1512] would be paid the next succeeding Friday? A. Yes, sir.

Q. All right. Leaving some delay of a maximum of 13 days maximum? A. Yes, sir.

Q. Why was that arrangement worked out in Chicago? A. In order to give Continental T.V. and its affiliates sufficient time to process the paper work involved in these transactions.

Q. All right. Now, were there any other subjects discussed at this credit meeting other than those specified in this Exhibit BG? A. Yes. The surprise audit.

Q. That was discussed? A. Yes.

Q. All right. What did you say at that meeting about that? A. Well, I spoke to Mr. Lockard about it again. I told him that I was angry about it. He admitted to me that he had done it in anger and

retaliation at my refusal to send the checks to the San Francisco lock box.

Q. All right. Now, was there any mention of entry into the [1513] Sacramento market made at the Chicago convention? A. Yes.

Q. And to whom? A. Mr. Carroll and Mr. French and Mr. Hines.

Q. And did you comment to these gentlemen about that subject? A. Yes.

Q. What did you tell Mr. Hines? A. I told him that Continental T.V. had plans to enter the San Francisco market—the Sacramento market.

Q. Was Mr. Carroll and Mr. Hines present at that time? A. Yes.

Q. What did Mr. Hines respond, if anything? A. He told me that he would be glad to meet with me. He suggested that we meet for lunch in Sacramento with Keith Anderson when we returned to California.

Q. Did you tell Mr. Hines on this occasion anything about the brands that you intended that store would carry? A. No.

Q. Mr. Carroll say anything? A. Not that I remember.

* * *

[1522] * * * Now, from the time of the meeting that you had in Chicago with Mr. Lockard and the other gentleman until the time you placed the Exhibit P order, were you personally aware of any change in the manner in which Continental was making its payments for SAU items? A. No.

(continued on next page.)

[1523] Q. Were you aware of any change in the schedule or the procedure in the way Continental was making maturity payments? A. We were sending the payments now for the San Francisco lock box and there was no change in the way we were paying the maturities.

Q. Did anybody from Sylvania up until the time you placed the July order discuss with you the subject of SAU or maturity payments? A. No.

Q. Did any personnel from Sylvania discuss any other subjects with you other than what you have testified to during that period? A. I had a meeting with Mr. Lopolito. I can't pinpoint the time, whether it was at the time I signed this order, before or shortly after.

Q. All right, sir. A. But it was in this period of time.

Q. What subjects were discussed with Mr. Lopolito on that occasion? A. We discussed the—primarily we discussed the credit relationship that Continental T.V. would have with Sylvania in the future and that it was to be handled by Mr. Lopolito entirely.

Q. And he told you that on that occasion? [1524] A. Yes, that we were no longer to contact Batavia.

Q. Between the time of the credit meeting in Chicago and the time of this July order, sir, did anybody from Maguire Company voice any complaints to you personally about your company's performance under their plan? A. No.

* * *

[1531] * * * Q. Mr. Shahood, in the months of either August or September, did you have any further conversations with anybody in Sylvania respecting the subject of entry into the Sacramento market? A. Yes.

Q. Who did you talk to? A. Lee French.

Q. And where did this discussion take place? A. At my store in Santa Clara.

Q. And what did Mr. French say and what did you say in essence? A. In the discussion Mr. French said that he had no authority to franchise Continental T.V. or any of its affiliates in the Sacramento market, it was out of his territory.

Q. Did he say anything to indicate to you how Continental could be approved in Sacramento? A. He told me it couldn't be approved.

Q. At that time did you know who the salesmen in Sacramento for Sylvania was? A. Yes, Mr. Hines.

[1532] Q. Did he say anything about Mr. Hines in this conversation? A. Yes. He told me it would require Mr. Hines' approval, but that we couldn't get it.

Q. Do you recall when this discussion occurred, sir? A. The actual discussion occurred in the early part of September.

Q. All right. Now, at the time of this discussion, was the Sacramento store open? A. No.

Q. Did you ever have any further conversations with any Sylvania personnel about Sacramento? A. Mr. French primarily.

Q. All right. When did the next one occur? A. I believe it was about the 5th of September.

Q. All right. Let's see. Labor Day weekend? A. Yes, just prior to Labor Day weekend.

Q. And where did this discussion take place? A. There were two discussions, one by telephone, and as I recall, I met—from San Francisco, and I met him in my Stevens Creek—in the Continental's facility at Stevens Creek.

Q. Which occurred first, the telephone call or the meeting? [1533] A. The telephone call.

Q. What did Mr. French say? A. He had heard that we had merchandise in Sacramento and that he wanted to know what it was doing there.

Q. What did you tell him? A. I told him that we intended to sell it there and to get me a franchise for the location.

Q. And what did Mr. French respond? A. He said he couldn't get me a franchise, that was Jim Hines' territory, and there wasn't a franchise available.

Q. Did you tell him anything else in that conversation on the phone? A. That wasn't on the phone, that was at our meeting in Santa Clara. We agreed to meet. He had called me up and we agreed to meet at Santa Clara.

Q. The phone call was just an agreement to get together? A. Yes.

Q. All right. So was it the same day that you did meet with him? A. Yes.

Q. And it was at the Stevens Creek store? A. Yes.

Q. At your office? A. Yes, sir.

[1534] Q. And you have related partially Mr. French's conversation at that meeting? A. Yes.

Q. All right. Is there anything else that you recall that Mr. French told you? A. He told me I was foolish, that I was jeopardizing my entire relationship with Sylvania by moving merchandise into Sacramento without having a franchise.

Q. And did you tell Mr. French anything else on that occasion? A. I told him, "Go ahead and try to get me the franchise, if you can't get it, I will move the merchandise out."

Q. All right. And did you again talk to Mr. French after that meeting about the subject of Sacramento? A. Yes.

Q. Did you talk to anyone else in the interim? A. I talked to my attorneys.

Q. All right. And how long after meeting with Mr. French in the Stevens Creek store and how long after talking to your attorneys did you again—was it until you again talked to Mr. French? A. I think it was the following day.

Q. All right. And what did Mr. French tell you on that day? [1535] A. He asked me what I was going to do about the merchandise there.

Q. And what did you tell him? A. I told him that I was going to keep it there, that I had spoken to my attorneys and they told me that it was unlawful for Sylvania to demand that I move the merchandise out, and I was acting on their advice.

Q. All right. Now, what did Mr. French respond when you told him that? A. He told me he thought

I was very foolish, that the relationship with Sylvania was very good, color shortage was coming up, I needed the merchandise, I had just previously negotiated a large order and received a suitable mix, and that I wouldn't get anything if I persisted in keeping merchandise in Sacramento.

Q. Do you recall the date of this particular discussion? A. I believe it was September 6th or September 7th.

Q. Now, when did the Sacramento store first open to the public? A. Day after Labor Day, September 8th, 1965.

Q. Whatever the day was, Tuesday? A. Tuesday, I believe.

Q. Now, the previous large order that you had given Sylvania was for approximately $112,000, Exhibit R. You [1536] gave that on August 27; is that correct? A. Yes.

Q. Did you understand Mr. French to be referring to that order, as well as the unshipped portions of the July order, when he told you that Sylvania would not ship you as long as you persisted in your desire to enter the Sacramento market? A. Yes.

Q. Now, where did the Sylvania merchandise that Continental shipped to Sacramento and displayed, where did that merchandise come from? A. From our warehouse in Santa Clara.

* * *

[1537] * * * Q. Do you recall about when the Vallejo store was opened? A. In October, late October-early November of 1965.

* * *

Q. Now, Mr. Shahood, in your discussions in early September with Mr. French, did you mention the subject of Vallejo? A. Yes.

Q. And did you make a similar request for a franchise for that location? A. Yes.

Q. And what was Mr. French's response? A. He told me that it was Hines' territory, but he [1538] felt there would be no problem getting the Vallejo store franchise.

Q. All right. Now, were you personally in Sacramento at any time in September of 1965? A. Yes.

Q. And I take it you were at your store location? A. Yes.

Q. Did you have any meeting with Mr. Hines during the time you were in Sacramento during that month? A. Yes.

Q. And where did that meeting take place? A. At the Continental Store on Fulton Avenue in Sacramento.

Q. Now, was that after or before your conversations with Mr. French? A. After my conversations with Mr. French.

Q. And can you tell us about how long after? A. He came in on the day we opened the—it was either the day we opened or the day before—it was the day after, the day after the conversations with French.

Q. All right. Now, did you have a conversation with Mr. Hines? A. Yes.

Q. And what did Mr. Hines tell you? A. He came in and he asked me what the Sylvania [1539]

merchandise was doing on the Continental floor and in Sacramento.

Q. What was your response? A. I told him it was for sale.

Q. And what did he say to that? A. He said that we couldn't have it there, we weren't franchised, that he didn't want us there.

Q. Was that the substance of everything he told you? A. He told me that he had large commitments that he had made with Keith Anderson of Handy-Andy and that our entry into that market jeopardized his relationship with Mr. Anderson. He also told me that Mr. Anderson was on the phone to Batavia screaming about the fact that we had merchandise in Sacramento.

Q. Did he make any reference to credit in respect to the merchandise you had on the floor? A. He told me that the merchandise in Sacramento was out of trust.

Q. Did he use that term? A. Yes.

Q. Okay. Let me show you Exhibit EH, which is a letter dated September 7, 1965, to Mr. Gene K. Beare, president of Sylvania Electric Products, from Sidney Rudi, attorney at law in San Francisco. Do you recognize that letter? **[1540]** A. [Examining] Yes.

Q. All right. Under what circumstances was this letter sent? A. I had told Mr. Rudy about our entry into the Sacramento market and Sylvania's refusal to franchise Continental T.V. in that market and their demand that we had to remove the merchandise from there, and Mr. Rudy advised me that Sylvania's conduct was unlawful and that he was going to advise them.

Q. And this is the letter Mr. Rudy wrote, to your knowledge, as a result? A. Yes, sir.

Mr. Miller:

"Dear Mr. Beare: This office represents Continental T.V., a California corporation, and Mr. White of this office is the secretary of the corporation.

"Continental T.V. has for some time been a franchised dealer in five locations in the Central California area. Your records will show that a very large volume of business has been done by Continental T.V. in the sale of Sylvania Home Electronics Products. The advertising program of Continental T.V. has been instrumental in establishing the Sylvania line in this area.

"Some two weeks ago Mr. Shahood routinely **[1541]** requested your representative, Mr. Lee French, to clear the franchise for Continental T.V. of two additional locations covering stores to be opened in Sacramento, California, and Vallejo, California. We assumed that the franchise would be cleared in due course as they have been with respect to the other locations which were opened and merchandise has accordingly been shipped and placed in the Sacramento store.

"Today Mr. French advised by telephone that no franchise would be cleared in Sacramento or Vallejo, that any merchandise moved into the Sacramento store would be treated as out of

trust and that Mr. Shahood was to remove all of the new Sylvania merchandise from the Sacramento store.

"We shall continue to assume that the franchising of the two new locations will be cleared promptly. Perhaps what has been done to date has been done on the initiative of your sales department without consultation with your office or your legal department. May I suggest that this matter be given your immediate attention and that we receive prompt advice that the franchising in Sacramento and Vallejo is approved.

"If for any reason you wish to discuss this matter **[1541-A]** with me please feel free to telephone me. Yours truly, Sidney Rudy."

A copy to George Shahood.

Your Honor, we would offer this as Claimant's next in order as marked.

[Continued on next page; nothing omitted.]

[1542] * * * *Voir Dire Examination*

By Mr. Popofsky:

Q. Mr. Shahood, Mr. Rudy is a most distinguished practitioner in Sacramento to your knowledge, is he not, to mine as well? A. He is an attorney.

Q. My question to you about Exhibit E-H, is the following: Did you on behalf of Continental TV authorize Mr. Rudy to transmit this letter? A. Yes, sir.

Q. Was it your custom to authorize Mr. Rudy to deal with such parties as Sylvania Electric or other third parties on behalf of Continental TV? A. Mr. Rudy could deal with anybody at any time when he felt it was necessary on behalf of Continental TV.

Q. And if he took action on behalf of Continental TV it was within the scope of your authority? A. Yes sir.

Mr. Popofsky: No objection, Your Honor.

The Court: Admitted.

The Clerk: Exhibit E-H introduced in evidence.

[1543] [Claimant's Exhibit E-H received in evidence.]

Direct Examination [Resumed]

By Mr. Miller:

Q. Now, Mr. Shahood, did you after talking to Mr. Hines in Sacramento again talk with Sylvania personnel during the month of September? A. Yes.

Q. Who did you talk to? A. Mr. French.

Q. Where did this discussion take place, sir? A. I spoke with Mr. French in many different places at many different times during the month of September.

Q. Can you generally relate for us the substance of what Mr French told you on these occasions? A. Mr. French told me practically on every occasion that I was acting very stupidly and very foolishly, that I was jeopardizing my entire program with Sylvania and that I was jeopardizing Continental TV's business, our future, and that I was foolish not to withdraw from the Sacramento market and re-establish my good relationship with Sylvania.

Q. All right. Generally speaking, what was your response on these occasions? A. I refused.

[1544] Q. Now, beside Mr. French did you talk to anyone else connected with Sylvania during the month of September? A. I don't recall.

Q. Let's go back a minute to Mr. French. Did French at any time in September mention the subject of credit review or credit problems to you? A. Yes.

Q. What did he say? A. I continually asked him whether I was going to get any shipments. He told me that he had been instructed by Batavia to tell me in the event that I asked what was happening to the shipments that he was going to tell me they were being held for credit review.

Q. All right. Now, did you attempt to give an order for merchandise to Mr. French for Sacramento? A. Yes.

Q. Would you tell us the circumstances of that incident? A. Mr. French came into my store, the Continental TV facility at Stevens Creek one day, and I told him I wanted to submit a franchise order for Sacramento. He told me that he couldn't take it. I told him I was going to give it to him anyway and I asked him to give me his order book. He wouldn't give it to me. I had Mr. Savage [1545] type up an order. While he was there I asked him to contact Ken Lopolito for me.

Q. Did you in fact get to talk to Mr. Ken Lopolito? A. Yes.

Q. Had you attempted to talk to him earlier? A. For some two or three weeks I placed calls daily to Mr. Lopolito's office.

Q. Now, what did you say to Mr. Lopolito on the phone that day? A. I asked him if he would approve the order I had placed for $112,000 and forwarded. He told me he had in fact approved it and forwarded it to Mr. Steiner. I asked him if there were any credit problems he knew of with Continental TV and he told me there was none. I asked him if there was any reason why a $75,000 or $80,000 order that we were placing for our Sacramento store couldn't be approved for credit. He told me there was no reason at all why, no credit reason why that that couldn't be approved.

Q. Did Mr. French leave the store with the Sacramento order that you had typed? A. Yes.

Q. Now, did you talk to Mr. Lockhart during the month of September? A. Yes, I did.

[1546] Q. Did he call you or did you call him? A. He called me, as I recall. I believe it was September 15 or 16.

Q. What was the subject of the discussion? A. He called me to tell me that the subject of discussion was our payment in compliance with the June 21 letter and our credit line.

Q. What did he say about Continental's performance under the agreements arrived at at the June convention? A. He said we weren't complying with them.

Q. Did you have personal knowledge at the time of that call as to whether or not Continental was in fact complying? A. It was my personal opinion that we were complying with.

Q. What did you do when he told you that on the phone? A. I got Mr. Savage on the phone and I told him that it wasn't true that we were complying with the terms.

Q. What was Mr. Lockhart's remarks after Mr. Savage talked to him on the phone? A. It was negative reaction. He said we weren't doing it. He informed me that he was cutting our credit line from $350,000 to $50,000.

Q. He told you that on the phone? A. Yes.

Q. Did you thereafter receive a letter from Mr. [1547] Lockhart respecting the subjects discussed on the phone? A. Yes.

Q. I show you Exhibit C-A, a letter directed from Mr. Lockhart to Mr. Pedlow at Maguire Company, dated September 16, in which he discusses the subjects which you have related. He says:

"Reference is made to my letter of June 21, 1965 which summarizes the meeting held in Chicago in early June with Mr. George Shahood of Continental TV.

"I note that your statement does not reflect the additional two months of free flooring which was granted on approximately 60 color TV sets (paragraph 1 of my letter).

"As far as I can tell, this deal with trust receipt numbers"—then he goes on and states the numbers—"your prompt adjustment of your records to reflect the true situation will be appreciated.

"I want to emphasize paragraph 2 in my letter from which I quote as follows:

'In the future, all maturities are due on the date the trust receipts do mature, ——'

"I recognize that paragraph 2 of my letter indicated that payment would be permitted by the next following Friday but I will comment further on that as part of my reference to paragraph 5.

[1548] "Paragraph 3 dealing with the day of the week for Maguire audits is to continue in effect.

"Paragraph 4 dealing with the use of the San Francisco lock box depository will remain in effect.

"Paragraph 5 deals with the timing of payments to Maguire by this account. In view of the fact that the procedure which was set up has not been successful in clearing items 'past due and not subject to renewal', the usual Maguire payment schedule should be enforced.

"I expect to try and reach Mr. Shahood today on the phone and discuss this matter with him.

"Thank you very much for handling this on behalf of J. P. Maguire & Company.

"Kindest personal regards,

"J. Lee Lockhart."

Copies were sent to Mr. Rivers, Mr. A. D. Russell and to Mr. George Shahood. Now, do you recall receiving a copy of that letter, Exhibit C-A? A. Yes. I received a copy.

Q. Now, let me show you another copy of the same letter, Exhibit C-D. At the end of this letter there is

a hand-written postscript dated 9-16, apparently in Mr. Lockhart's handwriting, which says:

> **[1549]** "Talked to George Shahood per contents of letter. Advised him that I would be sending him a copy. Reduced credit line to $50,000. Reasons: Published statements given [sic] to maturities have piled up, adverse information available that was not available when the credit was extended, advised by George Shahood will see you in Court."

Now, were these comments in Mr. Lockhart's handwriting on the copy of this letter which you received? A. No, sir.

Q. Now, did you in substance tell Mr. Lockhart if he persisted you would see him in Court? A. Yes, I did.

Mr. Miller: Your Honor, at this time we would offer Exhibit C-A as Claimant's next in order.

The Clerk: Exhibit C-A introduced and admitted in evidence.

[Letter marked Claimant's Exhibit C-A received in evidence.]

* * *

[1555] * * * A. Now, Mr. Shahood, how would you describe the color television market in your various market areas as of October, 1965? A. It was a very unique time in our business and our history of the television industry.

Q. How so? A. The demand for color television far exceeded both retailers, distributors and manufacturers ability to supply the demand.

Q. To your knowledge, had that condition ever existed previously at least while you were a T.V. retailer? A. No, sir.

Q. How long did that condition exist to your personal knowledge? **[1556]** A.. From October through the end of 1966.

Q. Has that situation ever existed since that time to your knowledge? A. No, sir.

Q. Now, was the balance of that July order or any part of the August order ever shipped to Continental's chain of stores? A. No, sir.

Q. Any part of the Sacramento order ever shipped? A. No, sir.

Q. What did the chain do for merchandise thereafter, Mr. Shahood? A. We made every attempt we could to get merchandise but we couldn't get any.

* * *

[1559] * * * Q. Now, Mr. Shahood, where were you on October 11th at the time of the repossessing action? A. I was driving from Continental T.V.'s store in Santa Clara to the Continental T.V. store in Salinas.

Q. All right, sir. And when you arrived in Salinas was the repossession under way? A. Yes. The Federal Marshals were repossessing merchandise from our store there.

Q. All right. Now, did you have any discussion with any representative from Sylvania and Maguire who was at that location? A. Well, a brief comment from Mr. Lopolito.

Q. What did Mr. Lopolito say? A. He told me, he said, "I am sorry, George, but what can I do?" And I made no comment.

Q. All right. Now, did you come back to San Jose? A. Yes.

Q. And did you cooperate generally with the repossession? A. I stayed out of it completely.

Q. Now, generally speaking, what was Continental [1560] T.V. Incorporated and its affiliated companies financial condition the day of the repossession? A. We were in better financial condition than we had ever been at any time in the history of our existence.

Q. All right. Approximately how much cash did Continental T.V. Incorporated and its affiliates have in the bank as of that date? A. I would estimate approximately $150,000 in our commercial accounts.

* * *

[1561] * * * Q. Now, Mr. Shahood, were your stores—strike that. Did your stores remain open on the 13th of October? A. Not all of them.

Q. What happened? A. The main store in Santa Clara was chained and padlocked. We were told to leave the store, by the Federal Marshals. They chained and padlocked it. Our warehouse was chained and padlocked at Laurel Road in Santa Clara.

Q. All right, sir. How long did they remain closed? A. Until the next day.

Q. And what did you do to reopen them? A. I posted approximately $100,000 cash bond to reopen it.

Q. To release the attachment? A. To release the attachment.

Q. And you got that up by the next day? A. Yes, sir.

* * *

[1569] * * * Q. All right. Now, what happened to Continental's expansion plans after October of 1965? A. There were no expansion plans. Everything was canceled out, and we in fact started closing stores down.

Q. Which stores were closed, sir? A. From October of 1965 through 1966 the Vallejo store was closed. The Sacramento store was closed, the Oakland store was closed. Ultimately, the San Francisco store was closed, the Salinas store was closed and we remained with the store in San Jose at 3585 Stevens Creek.

Q. What caused the closings? A. We had no merchandise to sell. We lost a lot of money.

* * *

[1578] * * * Q. Now, you opened your original store in West [1579] Santa Clara? A. Yes, sir.

Q. And thereafter from 1961 to 1964 you essentially handled Muntz T.V.? A. Yes, sir.

Q. And along the way you picked up Dumont and Emerson? A. Yes, sir.

Q. Now, during the course of this period you also opened up—and forgive my geography—in Sunnyvale, somewhere in here? A. Yes, sir.

Q. You opened a leased premises there? A. Yes.

Q. And sold for three or six months and then closed up shop? A. Yes, sir, I did.

Q. During this same period of time you opened a premises down in Salinas on a lease basis? A. Yes, sir.

Q. You opened that for a few months and closed it up as well? A. Yes.

Q. You also opened up in Redwood City, did you not? A. Yes, sir.

[1580] Q. And finally in early 1964 you opened up in San Leandro? A. Yes, sir.

Q. Over in the East Bay. So during the three or four years you used the lease device to open and close stores as you determined it was in the best interests of Continental T.V.? A. Yes.

Q. Now, is it not a fact that aside from your principal headquarters operation and perhaps your warehouse facility all the subsequent stores of Continental T.V. were opened on a lease basis as well? A. I don't know whether they were all opened on a lease basis. I think we rented some on a month-to-month basis.

Q. But you understood, did you not, from 1961 forward at all times that as a dealer engaged in the sale of retail of T.V. products you had this option available to open a retail operation by renting a space, maybe month-to-month, virtually anywhere in your general trade area and you took advantage of this in the early Sixties and you took advantage of this in the mid-Sixties? A. Yes.

* * *

[1595] * * * Q. Now, in fact, when you went into the Sylvania **[1596]** line and became a dealer your

general practice throughout your chain was to sell from 50 to 100 above suggested retail? A. In areas we did.

Q. In most of your areas? A. I don't know whether we did it in most of our areas. I would say in most of our areas we did. We sold in many cases higher than the suggested list.

Q. All right. And Sylvania didn't complain to you that you were selling 50 to a hundred dollars on an average higher than the suggested retail, did they? A. No, they made no complaint as long as we didn't sell below the minimum price they set.

Q. But you weren't interested in selling below the minimum on any occasion, were you? A. No, sir.

Q. At least not until after the rupture of relationships and you sold the distress merchandise you still owned? A. I don't know what you are referring to.

Q. All right. I will withdraw that, sir. Is it not a fact, Mr. Shahood, that at no time **[1597]** during any of the conversations concerning Sacramento, or during the September or October affair was price mentioned? A. I don't understand the question. I am sorry.

Q. Is it not a fact, sir, that you did not have any conversation during the months of September and/or October concerning Sacramento which involved the subject matter of price?

Mr. Miller: What year was that, counsel?

Mr. Popofsky: 1965.

The Witness: That's true.

Mr. Popofsky: Q. That is true. All right. Now, in connection, sir, with these post-May conversations

with Mr. French and Mr. Carroll you were told, were you not, that Sylvania had not objection to your carrying competing lines? A. That's true.

Q. In fact, Sylvania was going to go into your stores with other lines already on the floor? A. Yes, sir.

Q. And while Philco came along 10 months later no objection was expressed by Sylvania? A. That's true.

Q. Now, sir, you were also told, were you not, that it was part of the elbow room philosophy, this limited **[1598]** distribution system philosophy, to give you a courtesy notification in the event that Sylvania had decided to put a new dealer on in your general trade area? A. That's true.

Q. And at all times thereafter it was your understanding, was it not, that if dealers were being franchised that Sylvania would, as a courtesy, let you know about it? A. Yes, sir.

Q. But they didn't ask you to approve? A. No, sir.

Q. And they didn't extract any promise from you to approve any decision they had made with respect to putting a new dealer on? A. That's true.

Q. All right, sir. Now, also in connection with this limited distribution system that was described to you, is it not a fact that you were—you understood from the descriptions that you could sell anywhere to any consumers whatsoever who happened to be in your general trade area or that you could reach? A. That's true.

Q. No one told you that you were restricted to any defined territorial area, or to any category of customer? **[1599]** A. That's true.

Q. And, in fact, once you went into business with Sylvania, you, in fact, made sales from time to time quite beyond the 25 mile radius that you spoke of yesterday? A. Yes.

Q. I will show you, sir, just to—so the point is beyond doubt, Exhibit 41, which I would l like to ask you to identify for us. I think these are your—can you identify for us, sir? A. Yes.

Q. What are they? A. They are copies of our delivery and installation sheets for A & G Sales for the month of April, 1965.

Q. All right, sir. Now, glancing through these delivery sheets. What do they show, by the way? A. They show the name of the customer, the date, the customer's address, the delivery date, the model sold, the serial number of the merchandise, our inventory control card number, and the last sheet—the last number is what we call a UARCO number, which identifies the purchase order it was written up on.

Q. Okay, sir. Now, it is not a fact these sheets show the **[1600]** actual delivery of the T.V. set to a customer to whom you had sold? A. Not in all cases, sir.

Q. There are a few other dealers to whom you make shipments as well. A. Yes.

Q. Passing the other dealers, the rest are consumers, right? A. Yes.

Q. By and large? A. Yes.

Q. All right. Just glancing through these—by the way, where did A & G Sales sell from? What location, in April of '65? A. In April of 1965, in Oakland and in San Francisco.

Q. In Oakland and San Francisco. Okay. If you will just flip with me, sir, I see on page 1 sales in Petaluma, which is some 30-40 miles north? A. On page 1?

Q. Yes.

Mr. Miller: Counsel, did you say sales or delivery?

Mr. Popofsky: Delivery.

Q. Do you notice that one reference number 642?

[1601] * * * Mr. Popofsky: Q. Petaluma? A. Yes.

Q. And, let's see—A. I might comment here at this time that all these don't indicate that the set was delivered. In many instances customers picked up sets from our stores. They came into our stores and picked up merchandise in our stores.

Q. Would they still have a driver listing? A. On this, I don't know what the driver listing is I can't make out that. And that may well have been delivered. I wasn't isolating that.

Q. Fair enough. Well, wouldn't it be more logical to assume that the delivery sheets demonstrates or evidences actual deliveries by a driver of Continental T.V.? A. If a driver was noted.

Q. Right. I think there is a driver number listed in all of these pages, is there not? A. No, it isn't a driver number. Even though it has driver there that's not the driver number, that's the number of the UARCO which identifies the day we deposited the

money and the purchase order that was written up and forwarded to our accountant.

Q. All right. **[1602]** Well, not to belabor the point, Mr. Shahood, if you will just glance through these sheets, is it not a fact that from your locations in San Francisco and Oakland sales are made whether actually delivered or picked up by the consumer, in such places as Petaluma, San Rafael, Santa Rosa, Benetia, Napa, Fairfield?

* * *

Q. And East Palo Alto and Novato.

* * *

Mr. Popofsky: I have not finished the question. The Fairfield one being another T.V. dealer. Now, have I satisfied your problem?

* * *

The Witness: Could I examine these for a minute, counsel, please?

Mr. Popofsky: Q. Surely. You certainly may, sir. A. I would say that five out of 114 sales, that's five out of 114 were delivered outside the 25 mile limit, and that probably 80 percent of them were delivered within **[1603]** 10 miles of the store.

Q. I will accept that, Mr. Shahood. I would like to move the admission of this into evidence, Your Honor.

* * *

The Clerk: Exhibit 41 introduced and admitted in evidence.

(Defendant's Exhibit 41 marked and received in evidence.)

Mr. Popofsky: Q. Insofar as there were limitations upon the area into which Continental T.V. might sell Sylvania or any other merchandise, that was based on management's decision, as you explained it yesterday, was it not? A. Yes.

Q. That economically Continental T.V. felt it was more desirable to focus on its local trade area? A. Yes, sir.

* * *

[1612] * * * Q. Mr. Shahood, we come to Young Brothers. Remember when you first became concerned about Sylvania franchising Young Brothers? A. Yes.

[1613] Q. When was that, sir? A. I think it was in March of 1965.

Q. In March of 1965 you got wind that Mr. Carroll was thinking about a new dealer in the San Francisco area, Young Brothers? A. Yes.

Q. Young Brothers had stores on Mission Street and Geary Street; is that correct? A. Yes.

Q. You were concerned because you had opened or were about to open a new store on Geary Street? A. No, not—not at that time. I was already opened on Geary.

Q. You were already open on Geary Street? A. Yes, sir.

Q. So you were concerned about a new dealer coming into the San Francisco market? A. Yes.

Q. All right. Now, at that time you had placed an order for 200 TV sets which had not yet been shipped; is that correct? A. Out of line merchandise.

Q. Out of line merchandise? These were Sylvania sets? A. Yes.

[1614] Q. When you heard that Don Carroll was thinking about franchising Young Brothers, you called on Lee French and said, "Hold my order."? A. Yes.

Q. Or words to that effect? A. Yes.

Q. And what were your reasons for that? A. This was a large commitment, 200 color sets of an out-of-line model. It was my intention at the time to merchandise the majority of this—these models out of my San Francisco store, and it was just the management concern over ability to move merchandise in a location where they intended to put a dealer on right down the street from me. That was one of my concerns.

The other concern was that they had represented to me in their elbow room policy that they wouldn't put a competitive dealer in the area—in my immediate trade area in competition with me, and I also felt that this wasn't in keeping with their representations.

Q. All right. Now, this followed this Mission Street incident by what, six, seven months, the opening of your Mission Street store? A. I would say so.

Q. Now, when you asked Sylvania to hold that order that you had placed for the 200 out-of-line sets, you **[1615]** understood that that was within your prerogative, did you not? A. Yes.

Q. And you understood, did you not, that you could stop buying what—any Sylvania whatsoever if—if you elected to, should they put Young Brothers on? A. Yes, sir.

Q. And in fact, from March to May and up until June of 1965 you told anybody at Sylvania who would listen that you did not want Young Brothers fran-

chised in San Francisco? A. I wouldn't say that's a true statement.

Q. Perhaps I'm overstating it. You told Mr. Lopolito, for example. A. I told him in June, I believe, in May or June of that year.

Q. Exhibit 31 in evidence is a memorandum of May 10, 1965 from Mr. Lopolito, in which he describes a conference with you, and he states, among other things, as follows:

> "Shahood explained his position this way. His advertising of Sylvania reaches the entire Northern California area. He uses every medium possible including a weekly ad in the Northern California edition of TV Guide Magazine. He contends that his ads sell a great deal of Sylvania merchandise for other dealers. He also claims that Young Brothers will ruin the market due to price cutting. He stated that if we sign Young Brothers he is **[1616]** going to pull all Sylvania sets out of his San Francisco and Oakland locations and cease all advertising in this area."

Does that sound about like what you told Mr. Lopolito? A. I may have told him that. I'd like to explain that, if I may, Mr. Popofsky.

Q. You surely may, sir. A. On many of these negotiations, you deal in the best manner you feel you must in order to accomplish what you do. You always don't do what you say you're going to do over the bargaining table.

Q. Playing a little poker, are we? A. I would say so.

Q. All right. I think that's perfectly fair, Mr. Shahood, and you are—were playing poker right up

until June on this Young Brothers business, were you not? A. Not all along, I would say. There were times, yes.

Q. Just prior to June, you had a conference with Mr. Carroll, didn't you? A. Yes.

Q. And is it not a fact that Mr.—you asked Mr. Carroll point blank, "Is Young Brothers being invited to the June show in Chicago?" He told you no. **[1617]** A. Yes.

Q. And Young Brothers was not in fact being invited to the June show? A. That's true.

Q. But I think you saw that as something more. You saw that as an assurance, did you not, that they were in fact not going to be franchised? A. He also told me they weren't going to be franchised, and that he wasn't negotiating with them for a franchise at that time.

Q. Okay. When you got to Chicago you found out—— A. He had lied.

Q. ——that he had lied to you? A. Yes.

Q. At least that is your interpretation of the facts, sir? A. Yes.

Q. And there occurred the incident with the order? A. Yes, sir.

Q. Mr. Carroll popping twice while you were writing up and then the conference after the order was written up. Do you recall that sequence of events for us, sir? A. Yes.

* * *

[1618] * * * Q. Now, in connection with this June Chicago convention, Mr. Shahood, when Mr.

Carroll took you up into your room, you understood that his reason for doing so was to give you an opportunity to tear that order up; is that not so? A. No, sir.

Q. You told us yesterday that he had secured from you a "commitment," I think was the word. A. He had secured my signature in an order.

Q. He had secured your signature in the order, but didn't you understand, as you stood there and told him "Cancel it," that that was exactly what he was giving you an opportunity to do? A. No, sir, he didn't call me up for that purpose.

Q. Well, he was trying to continue to sell you. Obviously he wanted you to stay with the order, right? A. Mr. Carroll I believe didn't expect me to react the way I did.

Q. It is certainly true, is it not, Mr. Shahood, that when you said "Cancel that order," in a somewhat angry manner, that you were acting within your prerogatives, as you understood them? A. Yes, sir.

[1619] Q. And Mr. Carroll did not tell you otherwise? A. I'm sorry, I——

Q. And Mr. Carroll did not tell you otherwise? A. That's true.

Q. Now, sir, after the, if I may call it the Chicago incident, you went down to the main desk of the Edgewater Beach Hotel in Chicago and said "Farewell" in a rather loud voice; is that not correct? A. I don't know how loud my voice was.

Q. Did you not there declare for those who were willing to listen that Sylvania had just made you the

largest Philco dealer in the United States? A. I probably said that, yes.

Q. You were in fact angry? A. Yes, I was very angry.

Q. You left the Philco show—pardon me. Strike that. The Sylvania show in June, went off to Philco, right? A. Yes.

Q. And at that point did you not, sir, there adopt the decision that from henceforth Philco was to be your major line? A. No, sir.

Q. That is not a fact? A. That is not a fact.

Q. Did you not tell Mr. Lopolito that in August? **[1620]** A. No, sir, I don't believe I did.

Q. Did you not tell by Lopolito that in August? when you saw him on the occasion of visiting Keith Anderson's store, Handy-Andy, up in Sacramento? A. No, I did not.

Q. Didn't say "I'm cutting way down"? A. No, I made no such statement.

Q. Didn't tell Mr. Stockman of Philco that down in the Puerto Rico convention? A. No, I did not.

Q. Didn't tell Philco that? A. No, I did not.

Q. Did you not in fact tell Philco, sir, two things, that Sacramento was going to be an exclusive Philco outlet and that Philco was going to be 75 percent of your business henceforth? A. I didn't tell Philco that they were going to be 75 percent of my business henceforth.

Q. Let me show you, sir, Philco Focus, "A Magazine to build Philco dealer sales and profits." You have seen this before, have you not? A. [Examining] Yes.

Q. Can you tell us what that publication is? A. It's a Philco publication.

Q. Put out at or about the time of the—says **[1621]** August '65, after the big show in Puerto Rico? A. Yes.

Q. Now, you are familiar with the statements attributed to you in here, are you not? A. I haven't read this——

Q. For sometime? A. ——for—since it was published.

Q. Let me read that portion to you, sir, appears on Page 18, number on the lower left-hand corner, article by Bob Collin:

> "Continental T.V., Inc., largest retailer of color television in California and one of the leading independents in the country, expects to sell $2 million worth this year, 75 percent Philco. Further, sales projections for the firm, which is headquartered in Santa Clara, show that a $3 million annual volume in color television is definitely within reach in 1966—again with Philco in the the forefront."

Now, attributing a quote to you on Page 19:

> "'We turned to Philco color television after several years with another line,' Shahood said, 'because we think they have the best line of color models in the medium-priced field, where experience has shown 75 percent of our sales **[1622]** are made . . .'"

Pretty good sales stuff, isn't it? A. Yes, it is.

Q. Is that what it was all about, just sales talk? A. Yes, it was.

Q. Just sales talk. A. This is a Philco publication.

Q. I understand that. A. We were negotiating with Philco at the time and we pretty much told them what we thought they wanted to hear.

Q. Okay. One last thing, again attributing comments to you. Mr. Shahood, your reaction to the Philco show:

> "'When he came back from the convention," speaking of Mr. Allen, "he resigned his bank job and joined Continental T.V. as manager of our new Sacramento store which will be an exclusive Philco outlet.'"

Is that again just sales talk? A. No. Originally we planned the Sacramento store for an exclusive Philco outlet.

Q. So that portion of your negotiations with Philco you intended to be seriously taken? A. Yes.

Q. But the 75 percent talk of your business going forward, that was just sales talk? A. I don't remember making that statement, but I may **[1623]** very well have made it in my talk with these Philco people.

Q. Fair enough. I move the admission, Your Honor, of 17.

* * *

The Clerk: Exhibit 17 introduced and admitted in evidence.

[Document marked Defendant's Exhibit 17 for identification was received in evidence.]

* * *

Q. * * * Now, sir, you did tell Philco that you were going to carry a full Philco line in Sacramento, too? A. Yes.

Q. And in fact during the months of July well into August, 1965, it was your plan that Sacramento was to be an exclusive Philco outlet, or maybe Motorola on the side? A. I don't remember the exact date. We had made a management decision at the convention in Puerto Rico to take on Philco as our second major line.

Q. Well, is it not in fact the case that when in July and August you were making arrangements for the new Sacramento store, no thought was given to Sylvania whatsoever for that location? A. That isn't true.

Q. All right. Now, you organized SAM Industries, Inc., **[1624]** a new corporation, right? A. Yes, sir.

Q. That was to operate the Sylvania store in Sacramento? A. It was to operate the television store in Sacramento.

Q. All right. S was Mr. Shahood? A. Yes.

A. A was Allen? A. Yes.

Q. And M was Mr. Miller, Counsel? A. Yes.

Q. And they were the stockholders of this new corporation? A. Yes.

Q. All right, sir. Now, in July and August of 1965 plans were being made to open that Sacramento store, right? A. Yes.

Q. You incorporated, tried to negotiate a lease, and at that time Sylvania people came around with some new instruments for you to sign concerning

their security interest in the Ford merchandise; do you recall that? A. I don't recall it. My signature is in here. A lot of papers went over my desk, and I signed these instruments. These are my signatures.

[1625] Q. All right. Those are Exhibits DM and 12, confirmation of security interests. A. Hm-hmm.

Q. Now, three corporations are listed on those instruments, are they not, Mr. Shahood? A. Yes.

Q. A & G Sales, Continental T.V., Inc. and Sil-Pak. A. Yes.

Q. Now, those are the entities that operate every single one of your stores, Sacramento—pardon me. In San Francisco, Oakland, San Jose, Salinas, everywhere except in Sacramento? A. That's true.

Q. That is a fact, is it not? A. Yes, sir.

Q. So surely in August, sir, of 1965, when you, with the concurrence of your counsel, signed this instrument, you had no intention of having SAM up in Sacramento sell Sylvania? A. Yes, we had an intention. At that time my intention was to sell them via catalog.

Q. Via catalog? A. Yes. I would sell them via catalog, if I could.

Q. But there would be—— **[1625-A]** A. I would turn down no sales if they requested Sylvania. I had no plans at the time for the Continental T.V. store in Sacramento to handle Sylvania.

[Continued on next page; nothing omitted.]

[1626] Q. My question then is: You certainly had no plans to put floored merchandise into Sacramento at that time? A. I wouldn't say that. We

would, if we were going to sell them out of the catalog, we would have had floored merchandise there. But we had—we would have had it in our warehouse and had it available.

Q. Now, with Philco you went through the necessary paper work to set up the flooring for Sacramento well in advance of opening, do you remember that? A. I was never involved in that. Mr. Savage and the Philco credit department handled all that. They would give me the necessary papers to sign and I would sign them. This was true in all cases in our dealings with Sylvania also. They would submit the papers and I would sign them.

Q. Mr. Shahood, if we move from the blowup, if I may call it that, in Chicago, we move through July and August and the incidents you have described with respect to Sacramento, and come to Labor Day 1965. You changed your mind, did you not? A. I changed my mind that weekend.

Q. You decided to work Sylvania merchandise full floored right into Sacramento? A. Yes.

Q. Full line display, the whole works? A. Yes.

[1627] Q. Is it not a fact you did that without more than a couple or three days notice to anybody connected with Sylvania? A. I would say that was true.

Q. And certainly without any prior notice to anybody connected with the Sylvania credit department or with the Maguire floor plan? A. We had never given them—if I can clarify that—when we moved into Sacramento, we never gave them any notice. We never contacted Maguire or Sylvania credit depart-

ment. The same is true for Salinas or Oakland or whatever other location we moved into. Mr. French would know it and he would notify them.

Q. The fact that in July and August you had been asked for the first time to sign new security instruments concerning all your locations, that didn't cause any bells to ring? A. No. The paper work would be forthcoming. I believe that paper work came many months after we opened the store. I expected paper work would be forthcoming.

Q. You mean this defendant's Exhibit 12 and DM came months after you opened Oakland, Salinas and all your stores? That is my point. Did you not realize in that July and August that was—with respect to all your stores special securities were being made, new instruments were **[1628]** being asked for, new concerns being shown? A. No.

Q. It didn't cause any bells to ring? A. No, sir.

Q. I would like to focus on the reasons why you decided on Labor Day weekend to move full line display including floored merchandise into Sacramento. Is it not a fact, sir, that by that date you had decided the elbow room policy was not a meaningful distribution policy in the way Sylvania operated because they did it unilaterally for their own interest? A. I am sorry. I don't understand your question.

Q. Is it not a fact, sir, that you made the decision to move your merchandise into Sacramento because you decided that Sylvania was operating its elbow room unilaterally making all the decisions for themselves and as far as you were concerned it wasn't a real meaningful policy at all? A. No. I felt that

Sylvania was applying their elbow room policy to serve their own self-interests without regard to Continental T.V. in any instance.

Q. That is because they were franchising Young Brothers but against your will? A. That wasn't true.

Q. Let me just read—— A. Let me finish answering that question, if I may. **[1629]** They franchised Young Brothers down the street from my Geary Street store, yet they refused to franchise my store in Sacramento down the street from Handy-Andy.

Q. Yes, Mr. Shahood. But you just told us, sir, that you made the decision to move your merchandise into Sacramento before talking to anybody in Sylvania about that fact. A. We made the decision to display the merchandise. We moved it before. Nobody ever told me that I couldn't move, you know, merchandise to any of my other stores. This was the first instance where they told me that.

Q. Is it not a fact, Mr. Shahood, sir, that the way you conceded [sic] this movement into Sacramento was first retaliation for the Young Brothers decision and more importantly, a last gamut on your part, a gamble if you will, to force Sylvania to reconsider the Young Brothers decision? A. No, it was not.

Q. Let me read to you the following excerpts from your deposition. Page 259, Line 14:

> "Q. At the time you executed this document marked Exhibit B to the complaint, you had already been to the Chicago convention?
>
> "A. Yes.

> "Q. And you had already made some tentative **[1630]** conclusions as to whether or not Syivania had a policy at all called an elbow room policy, did you not? I am talking now about July 15.
>
> "A. Up until July 19——
>
> "Q. '65.
>
> "A. '65? To the best of my knowledge, up until this time they hadn't shipped Young Brothers any merchandise. From what I understand the decision was still in abeyance and I still hoped that they wouldn't ship Young Brothers merchandise. So had they not shipped Young Brothers merchandise and franchised Young Brothers then I certainly would have not put any merchandise in our Sacramento location.
>
> "Q. Are you telling me then that your ultimate decision for moving merchandise into Sacramento was a reprisal for shipping merchandise to Young Brothers?
>
> "A. No, I am not telling you that. It was just in compliance with Sylvania policy as they practiced it. There was no reprisal at all involved."

Let me go to Page 305, sir, Line 12: This is in connection with a conversation allegedly you had in September with Mr. Callahan. I don't think it has any relevancy to my question and answer.

> **[1631]** "Q. Didn't you ask Mr. Callahan about the fact that orders placed in August 1965 had not been shipped?
>
> "A. I think I mentioned that I wasn't receiving any shipments, that they had stopped sending shipments.

"French had told me continuously that, before then—and I related—I believe I related this to him—Lee French had warned me continuously that if I did place merchandise in Sacramento that this would jeopardize my whole relationship with Sylvania. He told me—when you say particular conversations, French was coming in all the time trying to resolve this situation and he repeatedly warned me—he pleaded with me. He said 'This is the greatest program and the greatest policy in the world. He was selling again. He told me 'Look, why jeojardize everything for Sacramento. You don't need Sylvania in Sacramento.'

"At the time I told him—and I recall—I said 'Look, I am not adamant in Sacramento. If in fact this is a policy, they don't put Young Brothers on, I won't put any merchandise in Sacramento. I will adhere to their policy.'

"He said 'Well why should something like that make **[1632]** the difference?'

"He said 'You are going to ruin the whole thing.' He warned me that, also in this interim, if I did put sets in Sacramento that I wouldn't get my shipments of 25's, to keep them out of there until I got that shipment.

"Q. Your store was open in Sacramento already, was it not, sir, September 12th?

"A. September 12th, yes, but this is previous conversations with French prior to the 12th. After August 28th."

Does that refresh your memory, Mr. Shahood?

Mr. Miller: On what, counsel?

Mr. Popofsy: Q. On the question of one of the reasons why you decided to put Sylvania full loored merchandise into Sacramento? A. I have never decided that.

Q. The phrase we discussed in connection with June, this was one gamble, was it not? A. No, it wasn't.

* * *

[1719] * * * Q. Now, Mr. Shahood, after your company received Mr. Lea's—the Maguire Company, Mr. Lea, his letter demanding some $45,000 and notifying you that credit line was formally cut, do you recall that letter? A. Yes.

Q. And after Mr. Allen's reply to that letter, you contacted, as I understand it, Mr. Rudy, your business attorney? A. Yes.

Q. Let me show you Exhibit E-N, which purports to be a letter from Mr. Rudy to Mr. Russell at Sylvania Electric Products, Inc. A. Yes.

Q. Did you know who Mr. Russell was? A. Yes.

Q. Who is Mr. Russell? **[1720]** A. At the time he was the counsel for Sylvania Electric Products in Batavia.

Q. All right, sir. Mr. Rudy says, on September 29:

"Dear Mr. Russell:

"I was not able to reach you by telephone this afternoon after being advised by Continental TV that no one from your office or from you credit department on the Pacific Coast has made any effort to communicate with Continental TV. This continues the program of silence that has been

maintained by your credit people except for the formal notification from John P. Maguire & Company, Inc. that Continental's credit line is reduced to $50,000.

"I hold in my possession the check of Continental TV, Inc., in the sum of $7,631.24 and another check in the sum of $17,495.26, both payable to John P. Maguire & Company, Inc. These checks cover the maturities calculated according to the practice which has been followed in the past and which has been approved by your credit representatives in Los Angeles and in Batavia. The maturities are calculated from the date of delivery of merchandise. The credit arrangement was for 4 months' free flooring with 2 months' extension. Payment was to be made on Friday of [1721] each week with respect to the amounts which matured during the previous week.

"I do not propose to forward these checks to John P. Maguire & Company, Inc., until you have released for shipment the merchandise covered by the present orders of Continental TV, Inc."

Mr. Miller: On Page 2, Mr. Rudy continues:

"Shipment was withheld without any justification or prior notice and after a portion of one order consisting of the undesirable merchandise was shipped. It was only after repeated inquiry by Mr. Shahood as to the failure to ship that he was given the current story that there is a credit problem. No effort has been made to verify Mr. Shahood's financial condition and in truth nothing has been done to indicate that this is, in fact, a credit problem rather than an effort to unfairly curtail Continental's activities in the sale of Sylvania merchandise. The record is quite clear from the statements made by your representatives, both to Mr. Shahood and to third parties, that the credit experience with Continental has been excellent. We can only conclude, therefore, that the present shutdown on Continental is prompted by motives other than the pretended credit problem. I have in my repeated telephone calls to you made a [1722] sincere effort to clear the situation since I am interested not in litigation but in maintaining sensible business relationship. If you choose to ignore our efforts along these lines you leave us no choice but to assert what I know to be Continental's legitimate claims in this matter.

"The losses to the business of Continental are already accumulating in substantial amounts by reason of the inavailability of merchandise to satisfy orders for Sylvania sets. It is obviously necessary that Mr. Shahood alter his advertising program in those instances where it is not already to do so to begin to eliminate reference to the Sylvania product. Obviously some action in one direction or the other is called for.

"If Sylvania persists in its present course it is our calculation that the damages recoverable by Continental will far exceed the balances due on the merchandise heretofore received by Continental and we will withhold payments accordingly.

"A copy of this letter goes to John P. Maguire & Co., Inc., so that they may be fully advised of our position in this situation.

"Except for short periods of absence from my office during the day I will be available to receive your telephone call.

"Yours truly,

"Sidney Rudy."

Mr. Miller: Copy went to John P. Maguire & Company, Continental TV.

Q. Mr. Shahood, did you receive a copy of this letter from your attorney? A. Yes.

Mr. Miller: Your Honor, we would offer this as Claimant's next in order as marked.

Mr. Popofsky: May I have one question on voir dire, Your Honor?

The Court: Yes sir.

Voir Dire Examination

By Mr. Popofsky:

Q. There are certain factual assertions made in Mr. Rudy's letter, Mr. Shahood. Do you know if the source of these factual assertions was you, Continental TV? A. Yes sir.

Mr. Popofsky: Your Honor, Mr. Rudy writes an excellent brief. I have no objection to the admission of this document for the limited purpose of the fact that it was sent. Obviously I object to the admission if it was to be for the purpose of establishing any of the facts set forth therein as **[1724]** in fact facts.

The Court: I assume there wouldn't be any stipulation as to the factual——

Mr. Popofsky: With that assumption, I would——

The Court: ——so it will be admitted.

The Clerk: Exhibit E-N introduced and admitted in evidence.

Mr. Miller: Thank you, Your Honor.

[Letter marked Claimant's Exhibit E-N received in evidence.]

Redirect Examination [Resumed]

By Mr. Miller:

Q. Now, Mr. Shahood, counsel showed you and introduced Exhibit C-D, which is a September 17, 1965 memo from Sylvania to yourself at Continental. Let me refresh you with it, sir, and it says:

"Dear Mr. Shahood:

"The following is a list, by model and serial number of defective and damaged merchandise in your possession. Please return this merchandise, via freight collect, t Sylvania Electric,"

at the address given here, and ends by saying:

"A credit has already been issued to cover the excise tax. Upon its receipt, prompt credit in full, less excise tax will be issued."

[1725] Now, as of September 17, 1965, had your company to your knowledge, received any credits for any of the concealed freight damage which had been claimed month after month on the Maguire audit reports? A. Not to my knowledge.

Q. And the receipt of this letter, of course, was after your conversation with Mr. Lockhart on September 16th? A. Yes.

Q. Sir, was Continental routinely given the money for these credits for this damaged merchandise referred to in Exhibit C-D? A. No sir.

Q. How did Continental obtain credit for this merchandise? A. My attorneys instituted an action in State Court——

Q. All right—— A. ——to recover that money.

Q. Now, Mr. Shahood, you have spoken of the reposession by the Federal Marshals, closing of the stores. How were those stores closed? A. The Federal Marshals came in with trucks, and they picked up all the merchandise which Sylvania and Maguire personnel identified as being floor plan, they loaded them onto the trucks, then they asked myself and my personnel to leave the premises, and then they padlocked the doors.

Testimony of Richard N. Sanford

[1994] * * * Q. All right, sir. Now, did you have any discussions with Mr. Don Carroll prior to the time that your company, Sherman & Clay, entered into a written franchise? A. Yes, sir.

Q. Would you tell us as best you can recall the substance—strike that. First, would you tell us as best you can recall the subjects discussed with him prior to the time you entered **[1995]** into a franchise? A. Well, Mr. Carroll had been soliciting our company as a possible franchise dealer of Sylvania and we had a number of conversations. And in the course of these conversations I examined the line and looked at the merchandise and he disclosed to me their distribution policies.

Q. What did he say about their distribution policies? A. Told me that they were planning, or had a program of limited distribution, that we would have less competition than we would have with some of the other lines that we carried, a little more breathing or elbow room. He also told me that the prices would be maintained and our profits would be protected.

Q. What did you understand him to mean when he said your profits would be protected? A. Well, that we would not be subject to competition who would be cutting our prices.

Q. Now, did he tell you anything on this early occasion respecting whether or not your entire chain would be franchised? A. Well, at the time of the initial discussions we had nine stores carrying radio and television and we discussed each and every one of these locations and I had an understanding with him that he would franchise all of them. However he told me that—excuse me—if we had any additional **[1996]** or new locations we would have to clear them with him in advance.

Q. Now, after you did sign a written franchise and started to handle Sylvania products, did your company in fact open one or more new branches? A. Yes, we purchased a music store in Modesto and placed the Sylvania line there.

Q. Did Mr. Carroll ever discuss with you the Modesto location? A. I'm sure he did. We had the understanding that I was to discuss, advise him of it.

(Continued on the next page; nothing omitted.)

[1997] Q. Did you ever discuss with Mr. Carroll that location? A. I am sure we did.

Q. Did you do so before Sylvania sets were moved for display? A. That was our understanding that we had to do them.

* * *

[2004] * * *Q. Now, what was the situation as you knew it commencing in August of 1965 as it affected retail dealers? A. Well, the supply of merchandise became very critical. We spent more time trying to get merchandise than we did in trying to sell it.

Q. Was this a situation consistent from manufacturer to manufacturer? A. Pretty well, I would say. It would vary to some extent.

Q. Mr. Sanford, did you know at that time if any manufacturer of a major line that was putting on new dealers in the fall of 1965? A. I don't know of any, no, sir.

Q. Now, again to your personal knowledge, how long did this unprecedented demand period for color TV sets continue? A. The shortage continued on through 1966 up until the beginning of 1967.

Q. Now, after, I think you said May of 1966, you left the Sherman and Clay organization? A. Yes.

Q. Did you go to another job in the industry? A. Yes. I joined the national union electric and was attached to their Dupont division as western **[2005]** regional sales manager for Dumont Television and Radio.

Q. Where were you located at that time? A. I headquartered out of San Francisco.

Q. And handled the Dumont product? A. For the 11 western states.

Q. Dumont had the same shortage problem as the other manufacturers? A. Yes, they did.

Q. Now, Mr. Sanford, you have been in this industry a good many years. Can you give us what is generally accepted in the industry as the market area in what is known as the Bay Area market. I would like you to give us this estimate in numbers of people. A. Today?

Q. Today. A. About three million.

Q. Back in 1965 what is your best recollection as to the generally accepted figure as the greater bay area market area in numbers of people? A. Somewhere between two and two and a half million, I would say.

Q. And if I asked you those same questions about the market area of Sacramento in numbers of people today, what is your best estimate? A. I would say that the trading area of Sacramento **[2006]** would be probably around 600,000.

Q. And in 1965 what would be your estimate? A. Somewhere between 500 and 550.

Q. 500,000 and 550,000? A. Somewhere in there.

* * *

Testimony of Robert J. Theis

[2522] * * * "Q. Was there any policy of the sales department against exclusive franchises for an area?

"A. We never pushed exclusive franchises, per se.

"Q. Well, but could the district man give one if he felt it was necessary?

"A. He didn't have the right to give one. Nobody gave an exclusive franchise."

* * *

Testimony of Ray J. Steiner

[2538] * * * The Clerk: State for the Court's records your full name, address and occupation.

The Witness: My name is Ray Steiner. I live in Woodcliff Lake, New Jersey. I am the vice president of the Sony Corporation of America.

The Clerk: Could you spell your last name.

The Witness: S-t-e-i-n-e-r.

[2539] * * * Q. Mr. Steiner, you stated that you were vice president of the Sony Corporation of America. Would you tell us what that is, please. A. The Sony Corporation of America is the subsidiary of the Sony Corporation of Tokyo, and we are the distributing agent for Sony Electric Products in the United States.

Q. How long, sir, have you been in that position? A. I joined Sony in April of 1969.

Q. What was your engagement, sir, prior to April of 1969? A. I was national sales manager of Sylvania in what we call the direct markets.

Q. All right. Just a couple of questions about the change in position. Did your departure from Sylvania and your employment at Sony have anything to do with this litigation? A. None.

Q. Sir, do you have any personal stake or interest in the outcome of this litigation as of this time? A. None.

[2540] Q. Could you briefly trace for us, sir, your business history with Sylvania Electric? A. I joined Sylvania in, I believe, 1960. I was what they call a district sales manager calling on distributors in the Middle West. In 1963 I was brought in as sales manager of their direct markets.

Q. Did that handle retail dealers? A. Yes. Where we sold direct to the retailers.

Q. That was 1963 you told us? A. '63, I believe, yes.

Q. Were you in that position then from 1963 to 1969? A. Yes.

Q. And that would be through the year '65, of course? A. Yes.

Q. All right. Very briefly, prior to joining Sylvania in 1960 what was your business experience? A. I was in the retail business and I also worked for wholesalers in South Bend, Indiana.

Q. Could you briefly tell us your educational background? A. I went to school in South Bend, grade school, **[2541]** high school and attended the university of Notre Dame and graduated from Notre Dame.

Q. Do you have a degree from Notre Dame? A. Yes.

Q. Could you briefly describe for us, sir, your duties as national sales manager direct markets for the period 1963 to April of '69? A. Briefly, I was in charge of a field force of approximately 40 to 45

salesmen and managers. I participated in the making up of quotas by region, by salesmen. We had expense budgets. It was my job to see that we did our sales within the expense budget that we had prepared. I helped in the selection of salesmen and managers. Briefly that is about it.

Q. Do you have any responsibility for the implementation of sales policies? A. Oh, yes, I did.

Q. Were you familiar with the policy known as elbow room? A. Yes.

Q. How long did that policy operate in the Sylvania sales department as far as you are aware? A. It got started when Mr. Bob Theis became president of the company. I would say it started in '62, **[2542]** probably.

Q. How long did it extend through your entire employment? A. Through the time I left Sylvania.

Q. In April of '69? A. Yes.

Q. Was it substantially the same in April of '69 as in '64, '65? A. Yes.

Q. Just for I guess purposes of recapitulation in this trial, could you briefly tell us the chain of command in the Sylvania sales department as it was in 1965. A. Yes. John Morgan was the president of the—let's see—Theis then Morgan and myself and under me were the managers. Whose name is that underneath your finger?

Q. Don Carroll is under your name? A. We had Don Carroll and two other what we call regional sales managers around the country.

Q. Mr. Morgan then was your—— A. Immediate superior.

Q. How many other regional sales managers under you? **[2543]** A. There were two more. A fellow named Lou Garson in the East Coast and a fellow named Carl Esler in the west.

Q. How many district sales managers were there in 1965? A. I would say approximately 40.

Q. Coming directly to elbow room, sir, can you describe for us the history of the origin of elbow room as you understand it? A. Well, basically elbow room was as a result of the fact that as a company we were in trouble. By that I mean that we needed something, a sales pitch that the sales company could use in order for us to get a foot hold in the market. Basically we were competing with RCA, Zenith, Magnavox, Motorola, private brands, and very frankly we were not doing a good job. So the elbow room is basically a selective or limited distribution approach that has been used by other companies in the business, for example, Magnavox, Frigidaire, and we decided we could no longer have a me too approach to the dealers. Because if we were in a me too approach or the same type of approach as RCA or Zenith, basically there was no reason for the dealers to handle our line because **[2544]** they could handle other lines.

Q. To your knowledge, sir, did the sales branch of Sylvania consider any economic alternatives back in 1962, '63? A. Yes. We knew that if the advent of this program, if it didn't work and we didn't increase our market penetration, if we didn't keep our plant running in Batavia, there was the alternative

that we would probably go out of the television business.

Q. Could you then briefly describe for us the concept of elbow room as it was then evolved. A. Well, the way it was evolved is we had distributors who were not doing a good job and we decided in these areas we would go on a direct basis. By that I mean we would not go through distributors, we would sell direct to the dealers. But it went further than that. We had branch operations around the country and we closed up the branch operations because they were very expensive and we were in a, as I said, in a rough position. So we closed up the branches and we had salesmen basically work out of their homes and start approaching and selling the dealers on what we call the one-step basis, from the manufacturer right to the dealer.

Q. You mentioned the phrase selected distribution. **[2545]** What did you mean by that? A. Well, our approach had been previously the same approach as RCA or Zenith in that we tried to sell as much dealers as we could and that had failed for us. So we decided that what we would try to do is have fewer dealers but, let's say, quality dealers and approach the business from that standpoint. We could give a sales story to the prospective dealer about the fact that it was going to be a limited franchise and the franchise would mean something.

Q. As you understood the elbow room policy, what did the franchise mean? A. Well, the franchise basically meant that what we were doing was going across the country was limited distribution, fewer

dealers. We expected the dealers to give us a good display of goods and we expected them to handle the line across the board, black and white, color, stereo, radio, and that basically he would be more or less rolling the dice with us that he could succeed on this type of program with Sylvania.

Q. All right. I would like to show you, if I may, what has been marked as Exhibit 3 and ask you if you recognize that. A. Yes.

[2546] Q. What is that, sir? A. That is our dealer contract, franchise that we had with the dealers.

Q. When to your knowledge, sir, did Sylvania start utilizing a franchise contract of this character? A. With the advent of Mr. Bob Theis and the fact that we went on a direct program around the country.

Q. Was this type of franchise agreement thereafter used? A. Yes.

Q. In connection with all of your distribution system? A. Yes.

Q. Could you describe for us the mechanics of entering into a franchise agreement of this character? A. Basically, what we did was we had to approach the dealers. We told them what our program was going to be around the country, that it was selective distribution, and that we expected certain things of him in the way of display, the fact that he would get behind the line and try to sell it because of the profit opportunity, and the thing that was very important we tied it all up with a franchise that both he signed and we signed and he had a copy. If it worked out, fine, or if not he could terminate the franchise or we could terminate the franchise.

[2547] Q. If I may draw your attention to paragraph 8 of this agreement, sir. It states in part:

> "Dealer agrees to use trade marks or trade names of Sylvania in advertisements, letterheads, or otherwise only as may be approved by Sylvania from time to time in writing."

Then it proceeds on.

What was the Sylvania policy with respect to the use of the Sylvania name in connection with franchise agreements? A. Well, once a dealer was franchised he then had the right to use our name in advertising, promoting the product.

Q. I notice on the front page of Exhibit 3 there is a blank. In this instance it is filled in with the name of Continental TV, Inc. What was Sylvania's policy with respect to the identification of the dealers who would be franchised? A. I don't understand your question.

Q. Well, perhaps I could put it this way: How did your policy operate in connection with the dealers who had more than one store? A. As far as we were concerned, let's say as an example, a silo [sic] in Philadelphia and other people that we dealt with that might have 8 or 10 outlets. We only had **[2548]** one franchise for the account. We did not franchise each and every account with a straight franchise.

Q. Did you franchise each and every location? A. Yes. What we did we had an understanding with them because it was limited that we would have the prerogative of saying that we wanted to be in this branch or that branch and if we agreed to be in a

branch then we had a document in Batavia where we could add to the locations of the dealer.

Q. I would like to ask you just a few questions about the techniques through which the elbow room policy was implemented. What was Sylvania's policy with respect to securing the approval or not of existing dealers in a given area with respect to prospective franchises? A. Oh, on something like that, we never—we couldn't run our business get [sic] approval of dealers to franchise. What we did is that in an area where we had a DSMA and a regional manager, District Sales Manager and a Regional Manager, basically it had to be their decision who they wanted to sell and franchise in their area. And once the decision was made then it was implemented. But we never had to get the approval of the dealer because if we tried to make that approval we would never have any dealers. So by the same token we were looking for **[2549]** different types of distribution. By that I mean maybe in one area you would have an appliance and television store and then maybe you would have a furniture store and you would maybe have a music store. So what we tried to get was a mix of dealers in the area. Then when we decided to franchise something, we did extend the courtesy of going to the dealer and telling him who the new Sylvania dealer was in the area because we thought that was good business.

(Continued on next page.)

[2550] Q. What was the Sylvania policy, sir, with respect to a dealer's handling of other competitive

lines? A. We encouraged them to handle competitive lines.

Q. That's from a sales point of view? A. From a sales point of view. The only thing that would enter into it is that if a dealer got himself spread out across the board with too many lines it could affect them as far as credit was concerned, but from a sales or marketing standpoint we didn't care what lines he handled or how many lines he handled.

Q. What was Sylvania's policy in implementing elbow room as pertains to exclusives? A. We had no exclusives.

Q. All right, sir. Were there any policies in operating elbow room with respect to the categories of customers to whom the dealer was authorized to sell? A. Sell anybody he wanted to.

Q. Were there any policies in connection with elbow room with respect to where a dealer might sell from a franchise location? A. There were no policies restricting where he might sell.

Q. All right, sir. Was there any policy as part of elbow room to procure a promise from dealers with respect to prior approval **[2551]** of opening new branches or movement of goods? A. No.

Q. Was there in fact, to your knowledge, any other agreement entered into in the ordinary course between Sylvania and a dealer beyond the terms of contract—— A. No.

Q. ——number three. What was Sylvania's policy, sir, with respect to pricing? A. We had a suggested list price.

Q. What did you do with that suggested list price, Mr. Steiner? A. Well, our suggested list price was part of our story to the dealer because the way we tried to price our line—you have to understand that in the television business there are what you probably call inflated list prices. Just because an RCA or Zenith is priced at $599.95 that isn't the price it is going to sell at, it will probably sell at closer to 549 or 539. So we realize this. So what we did was to put our suggested list price at that 549 price because we felt at that point it was a good value and then what we did was give a discount to the dealer off of the 549.95 price, which made it a profitable item for him. And therefore he could sell it and make a return on his investment, a generous return on his investment, a legitimate return on his **[2552]** investment.

Q. Were there instances, to your knowledge, where dealers did not follow the suggested price? A. Oh, yes, it went both ways.

Q. You mean above and below? A. Above and below.

Q. What was Sylvania's policy with respect to deviation from suggested list? A. We would try to encourage the dealer to sell at our suggested list to make a profit on the line and it would be of value to the customer, but where we had occasions where the man said, no, even when I sell below your list I am making more than I am making with RCA or Zenith and this is why I want to sell it, fine. We were not fair-traded.

* * *

[2554] * * * Q. All right, sir. Now, you saw the elbow room policy in operation, did you not, during your years with Sylvania? A. Yes.

Q. What was the result of the elbow room policy? A. Well, the result was that it was successful. We did get a foothold in the marketplace and we were able to compete with the big boys in the business and it got the onus off our back that we were going out of business.

* * *

[2584] Q. Mr. John Morgan was the vice president of the home entertainment division, correct? A. That is correct.

Q. And his immediate superior was Mr. Robert Theis, the president? A. That is right.

Q. Now, were there any intermediate supervisors between yourself and the regional sales managers like Mr. Carroll? A. No, I dealt with them directly.

Q. So the chain of command would be from Mr. Theis to Mr. Morgan to yourself to Mr. Carroll here on the coast? A. That is right.

Q. And then, of course, down to the district salesmen? A. That is right.

Q. Now, as I understood your testimony on direct, Mr. Steiner, in 1965, as indeed the policy was at all other times, Sylvania did not give a chain franchises, that is, did not chain their franchises? A. That is right.

Q. In other words, for example, if I were a Sylvania dealer in 1965 in San Jose and your company determined through its representatives that I should

be [2585] allowed to handle the line and I wished to handle your line and I at that time had only one store and you franchised me at that location, my understanding is that your policies dictated that if I subsequently wanted to open a new store in some other market area, be it Sacramento, San Francisco, Monterey, Salinas or whatever, I would have to get the approval of your company prior to the time that I could take Sylvania merchandise and display and sell it in other locations, is that correct? A. No, it is not correct, from one sense. You could take the merchandise to the store but you couldn't—let's say if you took it to Salinas you couldn't be advertising and use the Sylvania name as an authorized Sylvania dealer unless we gave you the permission.

Q. Let's talk about that a minute since you mentioned it. Now, if I have a franchise, for example, in San Jose, as you say, an authorized Sylvania dealer, what does that entitle me to do other than to buy merchandise from your company and display and sell it? A. It entitles you to display and sell it and to use our name in your advertising.

Q. In my advertising? A. Right.

Q. Anything else? [2586] A. It would also entitle you to be a servicing dealer for the line. You could buy parts, tubes, et cetera from Sylvania.

Q. First I could advertise using Sylvania brands, correct? A. Right.

Q. Secondly, I could buy small parts and small tubes or any size tubes? A. Right.

Q. From Sylvania? A. Right.

Q. Anything else, sir? A. That is basically it.

Q. All right. Now, suppose that I am not a franchised Sylvania dealer but I have a friend, let's say, in Chicago who is franchised with your company and I buy from him on a wholesale basis Sylvania sets. I don't deal with your company at all, sir. I bring those sets to San Jose. Can I not advertise Sylvania's brand in my advertisements if I have your merchandise on my floor? A. You could advertise, but you would get no cooperation from Sylvania as far as cooperating in the expense.

Q. In other words, I won't be paid any money by **[2587]** your company to help me advertise? A. Yes.

Q. But under those circumstances I could still buy some small parts from your company if I needed them for Sylvania sets? A. Well, that would be difficult because you were not a Sylvania dealer and you would not have a credit number. The only way you could buy parts would probably be from a local parts jobber on a C.O.D. basis. You wouldn't buy Sylvania because you weren't set up on our books as an account.

Q. So if I was not approved by your company I couldn't do business with your company at least for small parts? A. That would be probably true.

Q. Now, of course, the basic consideration when you talk to dealers throughout the country about—and I mean prospective dealers—about carrying the Sylvania line is—and this is the overriding concern, is it not? They wish to buy quality merchandise at attractive prices and resell it. That is what they are interested in. A. Yes. With any line.

Q. And the Sylvania factory did not furnish technicians who worked in dealers' stores to service sets, did they? **[2588]** A. To actually work in a dealer's store, yes.

Q. Yes? A. No. We had technicians in the territory that if a dealer was having a problem they would visit the store and try to work with a serviceman if he was having a problem on a set.

Q. But all manufacturers to your knowledge have similar service policies? A. Standard policy.

Q. In other words, RCA does this? A. Right.

Q. All right. Now, let's get back to this franchising of the chain. If I understand your testimony, if I am a Sylvania dealer authorized and approved to do business from a location located in San Jose, there is nothing your company could do if I wished to take some of that merchandise and sell it from a store located in San Francisco without your approval, is that correct? A. That is correct.

Q. Are you telling me, sir, that there was no policy in 1965 of your company under which an existing dealer was supposed to get pre-approval of a new location before he moved merchandise there and sold it; is that your testimony? **[2589]** A. Yes, that is my testimony.

Q. Did Mr. Carroll to your knowledge espouse this policy that you have just announced here in 1965? A. I would hope so.

Q. I am sure you have discussed this policy among others, with Mr. Carroll, have you not? A. Yes.

Q. And I am sure that Mr. Carroll has enunciated his thinking on this branch franchising problem to you? A. Yes.

Q. And from these types of discussions it is your personal knowledge that this was also Mr. Carroll's policy in 1965, is that your testimony? A. That is my testimony.

* * *

[2614] * * * Q. Mr. Steiner, during most of the time that you worked for Sylvania it was a subsidiary of a larger **[2615]** parent company, is that correct?

A. That is correct.

Q. General Telephone and Electronics? A. Yes.

Q. Who owns that company, doesn't it? A. Right.

Q. And I kind of got the idea from your direct examination that Sylvania, when you started with that company, was in pretty bad shape financially. Is that what you were saying, Mr. Steiner? A. Not financially, sales-wise and profitability.

Q. You were talking from the salesmen's end of the way the product had been accepted nationally?

A. Yes, our sales were very low.

Q. And when did you start with the company again, sir? A. In 1960, I believe.

Q. Let me show you Exhibit F-C which was obtained from your company during the discovery stages of this litigation and which indicates Sylvania Electric Products' net earnings before taxes for the years 1960 through 1969—the three zeros being omitted on the figures— A. Yes.

Mr. Popofsky: This was produced, Your Honor, at the request of counsel and covered all products sold by Sylvania **[2616]** Electric Products, Inc., not only television.

The Witness: That is what I was going to bring up.

Mr. Miller: I haven't asked any question.

Mr. Popofsky: This witness has not participated in the preparation of this document. It was produced in discovery solely for the purpose of one issue in the case.

Mr. Miller: If this bothers him so much I won't ask any questions about it at all.

Mr. Popofsky: I will stipulate to the accuracy.

Mr. Miller: Q. I just want to ask you if you are familiar with the earnings picture of the corporation as a whole for 1960 through 1965. For instance, pre-tax earnings in 1960 were over $24,000,000. A. Yes.

Q. And they went down in '61 to $8 and one half million and then came back up in '62 to $17,000,000. Were you aware generally, Mr. Steiner, that the pre-tax earnings of Sylvania Electric Products, Inc. more than doubled between the years 1965 and 1966? In other words, from over $40,000,000 in 1965 to over $84,000,000 in 1966. A. No, I can't say that I was familiar with that **[2617]** figure.

Q. In your opinion, sir, at least a substantial amount of that doubling of net profit was attributable to the huge demand for color TV products. A. I imagine we played a part in it, right.

* * *

[2682] "Q. On these occasions you talked to Mr. Shahood about this alleged problem, he in fact told you that there's a certain amount of built-in delay because of his chain store operations, didn't he?

"Yes.

"Q. And you understood that it took several days before the paperwork was processed by Cal Savage through the main inventory system; is that correct?

"A. I don't know what the length of time was.

"Q. But you understood there was some delay?

"A. I would have to assume there is; I don't know what it would be.

"Q. During the first six months of 1965, isn't it a fact that you were having some internal procedural problems in your own departments?

"A. Yes; we discussed that previously, some cash application.

"Q. I am still pointing out that this was during this period of time we are talking about now.

"A. Yes. But we gave special handling to Continental T.V. most of the time because of the large dollar amount, so we were watching it fairly close.

"Q. Was Continental T.V. by this time the largest Sylvania account for Maguire?

"A. I would think it was, yes."

[2761] * * * Q. Can you recall any particular business dealings in which you have participated with Continental TV? A. None whatsoever.

Q. All right, sir. Can you tell us who your predecessor was in your present position? A. Although the title, the structure organization was different, my predecessor was Mr. John Morgan. His title was President Sylvania Sales Corporation.

Q. Do you happen to know where Mr. Morgan is? A. He is associated with Bogan a speaker components manufacturer in New Jersey at the present time.

Q. I would like to ask you first, sir, if you could describe for us your educational background. A. I can do that quite quickly. I was born in Walstam, Massachusetts, June 2. I moved at an early age to Franklin, Ohio. I subsequently attended grammar school, high school in Franklin, Ohio. I attended the University of Notre Dame in 1940. I graduated in 1942. Following World War II with two years [2762] service in the Navy, I returned to Notre Dame for a year's graduate school.

Q. All right, sir. Can you tell us what your first familiarity—Can you first give us your business position following your completion at Notre Dame. A. I joined the Radio Corporation of America in January of 1946.

Q. That is RCA? A. Yes, sir.

Q. As it is generally called? A. Yes, sir.

Q. Could you describe for us your career with RCA. A. Yes. I spent 15 years with the corpora-

tion in a variety of assignments each lasting about 18 months to 2 years with the company. I had various responsibilities in sales, marketing distribution, product. I served as a vice president of their distributing corporation. The last assignment before I left the company to join one of their independent distributors was a five to six year stint as director of color television which was in the period of time that color was a new product being marketed and finally becoming **[2763]** a real product of the America marketplace. At that time I reported to the president of the corporation, John Burns.

Q. All right, sir. You started in 1946. What was the end of your career with RCA? A. Actually in 1961.

Q. All right, sir. By whom were you employed afterwards? A. Following that in Washington D.C. by Southern Wholesalers, Inc., as executive vice president. They are a wholesale entity that handles the RCA line and the Kelvinator line in the Washington-Virginia areas.

Q. What were your responsibilities? A. I had the total responsibility for the wholesale operations as executive vice president in charge of the complete business assignment of running the business and reporting to the president.

Q. That gets us to 1963, does it? A. I believe it does.

Q. By whom were you employed thereafter? A. By the Admiral Corporation in Chicago as sales manager of television products. Perhaps I can help you here. In the business chronology, I spent two

years with Admiral, joined Motorola in Chicago at the end of that **[2764]** two year period.

Q. That is 1965? A. Yes. Then following my assignment with Motorola, I joined Sylvania in December of '67.

Q. What were your responsibilities with Motorola? A. I had both sales and product responsibilities.

Q. So you have been in the television industry since 1947 in one capacity or another? A. Yes, I have.

Q. All right, sir. Do you hold any positions with various trade associations in the industry? A. Yes. I am chairman of the board of the consumer electronics group of the electronic industry association. The title is much more greater than the significance. But it is an honorary position held for a two-year period where as an individual you represent all of the manufacturers of the industry, in particular, legislative affairs in Washington and public relations for the industry in the area of statistics, providing reliable, dependable statistics for the industry, and also in the area of engineering standards. It is a trade association, a federation where the chairman is selected by the member companies to represent **[2765]** them in these various functions.

Q. How long have you held that position? A. I was elected in June of this year.

Q. When do you cease holding that position? A. It will be either June of next year or June of the following year.

Q. During the 23 years that you have been connected with the television industry, have you become familiar with the distribution patterns? A. Yes. I think very precisely, because my background has been—when I refer to the early association, the early years with RCA, my responsibility was opening of the black and white television markets. That simply means that we went into each market as a television station becomes available, set up the distribution structure both wholesale and retail and in effect developed the business in a given market area—so I would think that as well as anyone in the industry I do have a total familiarity with distribution patterns and distribution structure.

Q. Let's go back, if we could, briefly to 1947. Could you tell us what the manufacturing distribution system was at the advent of mass black and white in that year? A. I think so. Immediately following the war—of course, prior **[2766]** to the war there were a variety of manufacturers in our business. It was an easy business to get into inasmuch as the equipment manufacturing facilities were not large or were not expensive—however, after the war with the inception of black and white television, it was such a promising market that we immediately had just innumerable numbers of industries going into the market. Being in RCA was certainly an advantage, because they in effect were the originators of black and white television and had the commanding market share for a period of years. But the evolution was such that within a short span of time, being a highly

competitive business as it is, we had approximately 131 manufacturers producing and marketing television.

Q. Black and white? A. Yes. And these manufacturers employed a variety of means of distribution, of approaches. But basically 85 to 90 percent of the business was channeled through wholesale distributors or the middle man outlets, that of a manufacturer having 90 wholesale outlets spread geographically throughout the United States, and the responsibility of these wholesalers or distributors was to service the retailer in a given area. That service provides, of course, inventorying of merchandise, selling to the retailer, assisting him along the way, financing **[2767]** with him and servicing.

Q. You mentioned there were approximately 131 manufacturers. What happened to them as the years started going by? A. Well, they dropped off one by one. There was some pretty potent individual manufacturers in this group. Of course, as any new industry evolves, there is a great desire to become a part of it, great desire to derive profit from it. There were people like Stromberg Carlson in the business, CBS, Columbia Broadcasting System, and innumerable names such as Dumont that are not participants today. Actually what happened very quickly is that RCA was the dominant factor in 1947, probably had 60, 70 percent of the market. Philco which was a very strong powerful entity in those days came in. Motorola came in. Admiral came in very strongly. During the early fifties you had a changing in leadership

in the industry almost each year. RCA held it for a number of years. And I think in 1950 Philco was number one. Admiral was the following year. This leadership just kept facing [sic] back and forth. As a result of this, there was an intense activity in volume and pricing. As the pricing eroded as a result of volume, many of these other manufacturers, some major **[2768]**, some smaller, just could not sustain themselves in the marketplace. It is probably one of the most competitive industries I think exists.

* * *

[2769] * * * Q. Could you just briefly describe the kind of distribution practice employed by the companies you have described. A. Yes, sir. I would say that most of them who were significant in the business followed the pattern of selling through wholesalers around the country.

In other words, to list the manufacturers that employed that type of sales strategy or merchandise strategy. There was RCA, Zenith, Admiral, Philco, Motorola. These are the significant names in our industry today.

Some of them employed the direct to dealer type of program that Sylvania utilizes for the most part today. I think merging all of this was not a television manufacturer but a company named Magnavox that utilized this type of approach. There were other such as Setchell-Carlson that went to the dealer by passing the wholesaler or middle man.

Q. When, sir, did Magnavox adopt this direct system that you described? A. I believe—I can't

be absolutely specific on **[2770]** the date and I don't know what their pre-war association was or history—but it was there prior to World War II the genesis of this idea or thought. They accelerated it after World War II and they became a growing entity in the business during the fifties, middle fifties and later fifties.

They were concentrating particularly in the area of stereo and of phonograph equipment.

Q. From your perspective, what was Sylvania doing in the market? A. Not very much. Sylvania, as I knew the company being an observer and quite remote from them, in the early days I recall that they got off to a fairly good start as many manufacturers did. This was I believe in '48, '49. Subsequently, they had tried many methods and modes of getting their products to the consumer. But they had product difficulties. They were inherent of a device called halo light which was very simply putting like a neon bulb around the face of the tube. It didn't catch on. They supported this product, I believe, 14 years. During that period of time, I don't believe, and I look back historically as far as I could, they garnered more than a few percent of the industry. They were a struggling factor as were others in an attempt to find a way to bring their name to the public effectively.

[2771] Q. If I can bring you forward, sir, to the years 1961 and 1962. Could you describe the structure of the television industry as it had evolved in those years? A. Right. At that time we were on the prefaces of color television. We were all spending

money to develop a business with very little sales because of the high price of the product. I think you have to put color on the side over here, because at that time RCA was getting 70 to 80 percent of the business that existed.

However, RCA and Zenith, who have been so dominant, and I will have to relate to black and white, I think RCA from an industry share standpoint was number one in black and white with approximately, let's say, and my memory is not that good, let's say they had 18 to 20 percent of the business. Zenith was not far behind with maybe 14 to 15 percent. When you talk of the black and white area, it is a name that we don't mention too frequently in color. But General Electric was a factor.

Then you had a spread of, oh, three or four other manufacturers tht approximated 7 or 8 percent of the market such as Admiral, Motorola, Philco. The pattern at that time is not significantly different than it is today, sir, in our industry as far as number one, two, three, four, five position.

[2772] Q. Where was Sylvania? A. Substantially down the list. If there were 15 manufacturers they were around 13, 14, 12, someplace in there.

(Continued on next page.)

[2773] Q. All right, sir, to your knowledge what type of distribution system had Sylvania been employing? A. Well, they had tried all of them, but they were heavily oriented to the saturation type or the wholesale type that RCA and Zenith endorsed.

They had also experimented with a factory branch type of operation.

In other words, they had difficulty getting experienced wholesalers in the market because after you have such established leaders as RCA, Zenith, General Electric and others, it is difficult to get those wholesalers. So in the late fifties they went to a factory branch type of operation which would be wholly owned subsidiaries as a very expensive approach. This was not successful, and it was in approximately 1961 or '2 that they started moving in the direction of the concept of going direct to the dealer.

Q. You used the phrase "saturation" in describing the wholesaler type of distribution. What did you mean by that, sir? A. Well, to be successful these manufacturers generate as much volume as they possibly can and they are what we call demand lines. They advertise in great depth with great strength. They generate a desire on the part of the consumer to buy their products. To respond to the advertising investment that they have made, they then have to produce the product in great quantities and they have to **[2774]** then have multiple, a great number of dealer outlets to channel the volume that they are talking about to the consumer, and that is my expression of saturation or heavy concentration.

Q. What kind of policy did that form of distribution have with respect to the number of dealers? A. Well, I guess you can say that there is actually no policy regarding the dealers, the number of deal-

ers, I would say it is unlimited. They of course do have, and this is usually established from the manufacturer, but more specifically a local basis with the distributor type of franchise arrangement where the manufacturer wants to make sure—I am sorry, where the local wholesaler wants to make sure the dealer has the, oh, adequate store facilities antenna system to provide good pictures, that he has the service capability, and the things of this type.

Q. Did you at any time become familiar with the marketing or distribution system known as elbow room? A. Yes, I did.

Q. Can you tell us when you became familiar with that? A. I had an awareness. Elbow room to me was a jargon of, you know, the sales department. I did not call it as such. But I became familiar with it quite early in 1950 as we noted the progress of the Magnavox company. They were the first to utilize the elbow room. Elbow room simply means **[2775]** limited distribution. When you don't have the strength to cope with the major manufacturers you have to find a method of distributing your product that will give you a volume level, provide some profitability and grow a business.

Q. Did you become familiar at any time with the fact that Sylvania adopted something like elbow room or elbow room? A. Yes, I did, because I knew a gentleman named Bob Theis who was at Sylvania at the time and he wasn't a close associate of mine, but occasionally we met and at this time Bob told me that Sylvania was adopting a policy of elbow room

or compatible distribution, call it what you may and it was reported in the trade press. I don't have a strong recall of the exact time, but that was around 1962.

Q. When you came to Sylvania, sir, in 1967, what type of distribution philosophy was being employed? A. Well, the same basic philosophy. The concept has not changed, nor will it change. Certainly there are deviations within the plan, but they are minor. The basic concept of distribution exists and it will have to exist for a company such as Sylvania to survive in the competitive market that I am talking about in television.

Q. Today is this still the Sylvania marketing philosophy? A. Yes, it is.

[2776] Q. All right, sir. I would like you to briefly describe for the Court and jury what the purposes of elbow room or limited type of distribution policy is, the purposes are? A. Well, the purpose is really to enable us and our retailers to survive profitably, to effectively compete in a marketplace. Limited distribution merely means that there are less dealers in a given area. We have, for example, perhaps one-sixth of the dealers of our competition, but by having a limited distribution policy we feel that we can develop a more mutually profitable business with the retailer.

If we were to go out and compete with the majors we would not be successful.

What does elbow room do for us? It enables us to develop a close association with the retailer. It en-

ables us hopefully to get the quality, prestige accounts in a given market area. It enables us to, frankly, utilizing the Sylvania name, which is strong in most areas, to get greater representation on that individual dealer's floor, to get a greater share of his business.

The problem in our business today is, and I guess in other businesses, is that with the multiple representation of dealers of products, competitive products, the customer merely goes back and forth between stores and shops maybe eight, ten, twelve stores, and with this elbow room or limited **[2777]** distribution approach he can still shop but he has less area to shop in and we think resultingly our dealers gross a better profit from our line.

Q. What is the technique or the manner by which this limited distribution policy is implemented, what device does Sylvania use? A. Well, we use—I think what you're referring to—what this would be, we have a franchise arrangement and the franchise, we feel, is a strong instrument for us because it does define our mutual relationship and association and what we expect of the dealer and what the dealer expects of us. It's a two-way street and we expect—we expect him, for example, to be well-financed, we expect him to have a store in a high traffic location, we expect him to adequately represent us on his floor, to give us an adequate amount of time for sales training, we expect to work with him in the area of advertising, such as that.

The franchise implementation in our business, we think, is a much stronger vehicle than our competi-

tor's, because of the direct association between factory people that are stationed in local areas as compared to the bridge that the other manufacturers experience to a wholesaler which is separate large business entity in a given market to his people and then to the dealer. I think it is implemented by a very strong franchise and a close relationship with the **[2778]** dealer.

Q. What is the policy under the Sylvania limited distribution plan with respect to locations of franchisees? A. Well, we reserve the right to select the location of a franchise dealer. Maybe it would be helpful if I mentioned at this point, which I haven't referred to, that unlike most of our competitors we establish a volume level for a given market. You have to do this for elbow room policy to be successful. On a national basis, let's say, for example, we want to get five or six percent of the market. Talking about San Francisco or Los Angeles, that's what we want to get and we look at it as we analyze the market from the standpoint of the dealer's capability in franchising the account and specifically we certainly reserve the right to agree, or to select the dealer locations we want to merchandise our product.

Q. Why five or six percent, sir, why not 20 percent? A. Well, we may change our mind some day, but we have tried—let's put it this way, we have tried the 20 percent approach. We tried it very unsuccessfully and I have to relate, of course, I observed this and was not a part of it during that strenuous period from 1948 to 1962, and we just don't have

the capability of competing in volume and advertising monies with RCA and Zenith.

There is a level where we can be profitable and the **[2779]** dealer can be profitable and we have established that based on the costs of our operation, if you will, at a five to six percent level.

Now, admittedly there are areas around the country where we are getting more than that, but as we look at a market we can—if we can get five or six percent of that market we can maintain our limited distribution philosophy, we can be a profitable line for the dealer, we can effectively compete in that market at that level.

Once we start going to more and more dealers we become less important to each of these individual dealers, and there is no magic formula, it is just a point that we have determined that is the level we feel that we can maintain the elbow room philosophy at present.

I think we can probably go to eight percent of the market and maintain this.

Q. As a marketing target? A. As it grows, right.

Q. You said that there were prices [sic] where Sylvania got over five or six percent. Are there places where the reverse is true? A. Yes. You mean where we get less than—unfortunately, yes, there are.

Just to give you a feel of the strength, we are an Eastern originated company. I think when you are in that **[2780]** posture your strongest market share would naturally evolve over a period of years in

the area where you're known best and we have evolved because of other divisions of the company, our lighting division, for example, the Boston, New York, Philadelphia markets, and is a strong entity in those markets. One of our problems, very frankly, and my personal problem, is that we have reached a level of numbers of dealers and volume of business where we cannot franchise many of the accounts that want to be franchised. We have to turn them down, and that is a difficult thing to do for a salesman. But we do have to do it.

On the other hand, our weakest areas have been Chicago and the West Coast. I think there are several reasons. Number one, an Eastern manufacturer, as he grows, grows most slowly on the West Coast. Also in our business, a name that I don't believe exists today, as we were growing, Hoffman was a very successful manufacturer here in California, Packard-Bell was a much more potent factor than they are today from the market share standpoint, and we just have not had the good fortune to grow in these markets the way we would like.

Q. All right, sir, I would like to ask you what importance you attach under a limited distribution policy to the kind of dealer that you attract? A. Well, we think there is a trend in the retail **[2781]** business. I'm sure you have been exposed to the history of our business. We think there is a trend to the retailer handling fewer lines. For obvious reasons. If he handles two or three or four lines of television he can do a better job on those than if he

handles eight or ten. And this gives us an opportunity to better train the dealer for him to better merchandise our line, et cetera, with the limited distribution pattern.

Q. What does the franchise mean to the dealer under the limited distribution philosophy such as Sylvania's? A. I think it is a much stronger franchise than those that exist of a saturation type.

Q. Stronger in what sense? A. Well, stronger because this is the type of arrangement he is looking for with the manufacturer. He wants to have a far greater geographical area to serve, he wants to effectively compete in that area and he can do it better, I feel, with a limited distribution type of an approach than he can in any other way.

Q. All right, sir. I would like to just run through a few of the policies of Sylvania that exist with respect to the limited distribution system.

Mr. Miller: At what time, Counsel?

Mr. Popofsky: As he is familiar with elbow room upon his advent with Sylvania under Sylvania's marketing in **[2782]** 1967 and which, according to the testimony yesterday, remained the same from 1962 through 1969, according to Mr. Steiner.

* * *

[2785] * * * Q. Just generally speaking, can you tell us what has happened to the general level, retail level of color prices in the marketplace? A. Yes, sir. Like black and white, or like any industry, we came in at a very high price level. When I say **[2786]** "we," the industry, and year by year these prices

have eroded, have been reduced due to two elements, I think: They would be increase volume which always helps in the growth of an industry, and secondly, technological changes, development of chassis, reduction of components in the chassis. At the same time it has maintained a severe competitiveness in the business.

It is a difficult business to survive in and I think indicative of that we have lost a few—we have lost Westinghouse last year and I think we are at a juncture in our industry where it is so competitive and so difficult for a manufacturer to make a profit that there may be further erosion.

But to your specific question, the price has receded from a level—I don't recall the exact level in 1961, but let's say it was at the 695 level and at 595, and now you are down and I think you have to talk to comparable merchandise, at least several hundred dollars below that, like 395 to 495.

Q. That is the price to the consumer? A. Yes. That is the suggested retail price. There are a lot lower prices but I was trying to compare a big screen product in that era to one of several hundred dollars reduction.

Q. You mentioned that was true throughout the industry. Was that true of Sylvania as well? **[2787]** A. Yes.

Q. Were you familiar with the supply-demand situation which arose in or about September of 1965 in the television industry? A. Yes, sir.

Q. Can you describe that for us? A. I can remember that pretty well. We of course had been

building a color television set for a number of years with the forecast each year that there would be a shortage evolving.

It really never truly materialized until August, and it was like mid-August of 1965. At that time we had been striving to get the support for the National Broadcasting Company, the first T.V. network in color.

It seems to me about that time both CBS and ABC came in very forcefully into the color picture. The sale of color sets is directly related to the availability of color programming, so in August business started to ascend.

Well, concurrently with this most manufacturers had effectively over-facilitated for the market that existed and they started producing sets as rapidly as they could.

My recall is that that shortage period, that distinct shortage period—and I am speaking from experience at Motorola—was relatively short-lived. It extended into December, perhaps into January of that year.

[2788] I remember then we were attempting to find merchandising methods to move our merchandise during the second quarter.

Q. Of what year? A. Of 1966. It was really the only shortage, distinct shortage period in the history of the color business. It was in August, 1965 to January or February of 1966.

Q. After January-February of 1966, could the television dealers to your knowledge procure new inventory? A. Yes, I would say so because I remember

my own experience and we were attempting to develop plans, merchandising plans to sell what inventories we had. The inventory started building up in pretty good force through that period of that year.

Q. Are you familiar with the term "allocation"? A. Yes.

Q. What does that mean, sir? A. Allocation means that a product is not available in quantities to satisfy the demand of the marketplace. Usually when you are in short supply of a product you put it on allocation and you attempt to allocate it as it becomes available to the customers that have been with you for a period of time, predicated upon their past sales experience.

Q. To your knowledge did Motorola go on allocation? **[2789]** A. No, not as such. We sold to our distributors on a three-month basis and we had allocated—not allocated, but we had provided the distributors the amount of production they were entitled to in June of that year, as we would in every three-month period. As we came into the fall period there were certain models that were not available but we never had an allocation as such. Our total production went to 90 distributors and they in turn sold it to retailers.

[Continued on the next page; nothing omitted.]

[2790] Q. To your knowledge did some manufacturers continue formalities of allocation beyond the January-February period of 1966? A. I think they may have continued the terms because I know that in looking back at the history of our company there was an allocation utilized in that period.

Q. Sylvania? A. Yes. However, with the mass producers I do not recall any need for allocation at that time.

* * *

Q. On the last subject I was discussing with you in connection with the supply-demand situation in 1965, in the last three or four months did that pertain to color TV? A. Yes. There was no shortage—well, in fact, black and white was in abundant supply because the color market was beginning to infringe on the sale of black and white television. As a result the manufacturers had overproduced and black and white inventory was plentiful.

[2802] * * * Q. Is it not a fact, sir, that it follows that where there are fewer dealers handling the Sylvania brand in any market area, it is easier for those dealers to maintain any given level of retail prices on that product? A. That is true. There would be less opportunity for people who come into those stores.

Q. As a result whatever the retail price the dealer sold at he would have less competition from the shoppers. For example, if I was a customer in Sacramento, California and I wanted to buy a Sylvania brand television set, color television set, and the year was 1961, sir, and if you can assume this chart—let me bring it up—you can assume this chart is accurate and there are about 19 dealers shown in 1961 in the Sacramento market area handling the Sylvania brands. Now, if you assume that those facts are true, Mr. Boss, for example, as a typical customer who

wanted to buy a Sylvania brand, I could go to any of those dealers in Sacramento, couldn't I, and shop? A. You could.

Q. And I could shop for price and I could shop **[2803]** for facilities and I could shop for service? A. Yes.

Q. You gave me yes to all those questions? A. Yes.

Q. Now, suppose that the same situation exists as far as the fact that I am hung up on the Sylvania brand and I still wanted a color set from Sylvania but it is now 1966 and I am in Sacramento, sir, and it appears that we have got one dealer named Handy Andy up there in 1966. Now, unless I want to get in my car and drive somewhere else, I have to accept pretty much the prices charged by Handy Andy for Sylvania brands in 1966, don't I? A. That is correct.

Q. And I have to accept his facilities, don't I? A. That is true.

Q. And his service department? A. Yes.

* * *

[2804] * * * Mr. Miller: That is not the fact, Your Honor. I am merely taking Exhibit F-X which incorporates facts in evidence. I am simply asking Mr. Boss if it would not be a fact that the price competition aspect of the SLD distribution policy would be adverse to me in 1966 as a consumer at the retail level in Sacramento.

Q. Do you understand that? A. I understand that.

Q. Could you answer, please? A. No, sir, I couldn't. I would like to qualify it. From the standpoint I think you are leaving out the important element of pricing. That is the element of **[2805]** competitive products in that market. Your assumptions on Sylvania as to your being a consumer coming into the Sacramento and the Handy Andy stores could be basically true. However, I think an altering influence, of course, is the price of the RCA that an account handles or Zenith or a competitive line.

Q. But you would agree if we restrict our discussion as to the same brands, that is, other Sylvania dealers and other Sylvania brands, that the price result to me as a consumer, speaking of that brand alone, would be adverse under that situation? A. As a consumer?

Q. Yes. A. Yes, sir.

Q. Now, as a matter of fact, I have heard Sylvania merchandise referred to as a Cadillac of the industry back in 1965 and 1966. Have you heard the same thing? A. Yes, I have.

Q. And you would agree with me, I take it, that Sylvania products were not considered low price products in 1964 and 1965? A. True.

Q. As a matter of fact, Sylvania built a quality piece of furniture as well as quality electronics? **[2806]** A. They did. A point of addition here, they built the higher priced quality product and they covered the other price categories with a quality product also. They did cover the price spectrum in most all product areas.

Q. All right. But they certainly were not a Muntz brand? A. No, sir.

Q. And they were certainly in your opinion, sir, a higher quality brand than Philco in 1965, were they not? A. I would say so. I would say they had a quality product that time and had sustained it since then, as good a quality as any in the industry.

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Testimony of Lee E. Preston, Jr.

[2872] * * * Q. Mr. Preston, please speak up, if you will. A. Yes, certainly.

Q. What is your present position? A. I am Baker Professor of American Enterprise at the State University of New York at Buffalo.

[2873] Q. What is a Baker Professor? A. Well, it is an endowed chair named after a distinguished industrialist named Melvin H. Baker who was the founder of the National Gypsum Company.

Q. When were you born? A. I was born in 1930 in Dallas, Texas.

* * *

Q. Could you briefly describe for us, Professor, your educational background? A. Yes. I studied economics at Vanderbilt University and received an A.B. Degree in '51. I went from there to Harvard University and received a Master's Degree in '53 and after a period of military service, received a Ph.D. in 1958.

Q. What is your Ph.D. in? A. In economics.

Q. Since your degree was obtained at Harvard University, what positions have you held? A. I came directly from Harvard to Berkeley where I [2874] was an assistant professor in the School of Business Administration and after eleven years on the Berkeley faculty I was eventually a full professor, as time goes by, and an Associate Dean of the School of Business Administration. I resigned that position effective June 30, 1969 to step into my present appointment in Buffalo.

Q. In addition to your professorial duties at Berkeley did you hold any other position in the economic field during the 1960's? A. Yes, on leave from Berkeley I have been with the President's Council of Economic Advisors during the Kennedy Administration and I had the pleasure of meeting Justice Clark during that tenure. I have served as a visiting professor at universities outside the United States and as a consultant to a large number of Government bodies, private firms, law firms, educational publishers and a variety of people in my professional field.

Q. What kind of governmental agencies have you served in an advisory position? A. I was a member of the Neal Task Force, the present task force on antitrust policy under President Johnson and I have been a consultant to the Department of Justice, the United States Federal Trade Commission, the Department of Justice of the State of California and numerous [2875] other agencies.

Q. You mentioned that you served at universities abroad. What ones were they? A. The American

University in Cairo, Egypt in 1966 and the Chinese University of Hong Kong in that year also.

Q. What field of endeavor were you engaged in? A. In teaching and research in the field of economics and marketing. My fields of work through all this activity are economic analyses of marketing and antitrust problems.

Q. Professor, are you a member of any economic societies or professional societies? A. I am a member of the American Economic Association and American Marketing Association.

Q. Have you had occasion to publish in the marketing field? A. Yes, more things probably than you would care to mention or anyone would ever care to read. There are quite a number of books and articles of various types in the field of economics and marketing.

Q. Could you give us a selected list? A. One of the items that might be of special interest in connection with this immediate testimony is an article in the Journal of Law and Contemporary Problems, published by the Duke University Law School. That is an article called [2876] "Exclusive Distribution Arrangements, Economic Analyses and Public Policy Standards." This was an invited article by the editor of the Journal in 1965 for an issue of the Journal devoted to analyses of single firm conduct in this antitrust field in marketing.

Q. Have you had occasion to study distribution methods in different industries? A. Yes, frequently, because I write and teach in this field all the time.

Q. What kind of industries have you published reports concerning? A. Well, quite a number. The food industries, food processing, food manufacturing, food distribution, the paper and pulp industries, petroleum industries, teaching and research in the field of marketing. One regularly follows development in most of the major industries of the country in the field.

Q. Could you give us just a rough estimate of your number of books and articles that you published in the marketing and distribution field? A. I think there are about three dozen, but you can count if I am wrong.

Q. How did you happen to come to testify here today? A. Well, I received a telephone call from Mr. [2877] Popofsky who I believe had learned my name from others in the field and was familiar with some of my written work in the field. He asked if I would look into the types of distribution arrangements that were involved in the Sylvania Company and comment upon their economic effect based on my background in the field in general and a study of the specific activities to whatever extent I was able to find out about them.

Q. Do you recall approximately how long ago you had that conversation? A. Oh, I should know exactly, but it must have been about three months.

Q. Can you tell me what you did following that initial contact? A. Well, based upon general knowledge and knowledge that one has of distribution in, for example, the electric applicance, home appliance

industries. Broadly defined I began to do some background reading about television industry as such, consulting the publications in the business about the number of dealers of various kinds for the types of product. I consulted a Dun & Bradstreet publication which reported in some detail on the number of brands carried by various outlets. [2877-A] I obtained data from very specfic sources relating to the television industry and I talked at length with Mr. Trevision (phonetic) who is present in the room here.

(Continued on the next page; nothing omitted.)

[2878] Mr. Popofsky: Mr. Trevison, would you please stand?

Q. He is with the Sylvania Legal Staff? A. That is correct, with offices at Batavia, New York, and I was able to discuss with him personally and put questions to him which he then answered on the basis of consultation with the other people in the Batavia office in the Sylvania organization, so that I could get some factual background.

Q. Limiting yourself for a moment to the portion of your work which related to a review of the television industry in general, and forgetting Sylvania at the moment— A. All right.

Q. —what did you learn? A. Well, I learned that there are quite a number, I would say about 12 or so, significant domestic brands, manufacturer's brands of television sets. In addition there are quite a number of imported brands. I learned that the market share nationwide of the manufacturers varied quite considerably, that there are perhaps two manu-

facturers who have quite substantial market shares, say 20 percent or so, and then a group of about 8 manufacturers that have market shares ranging from, oh, say 9 to 4, something like that in percentage points.

[2879] Q. Could you identify for us the two with the largest market shares? A. Yes, Zenith and RCA.

Q. Where does Sylvania fall in the industry? A. Sylvania is down near the bottom of the second group, by no means at the bottom of the entire list. But the data I had available showed Sylvania's market share to be in the 4 to 5 percent range.

Q. Did you observe any other facts pertaining to the television industry in general? A. Yes, I looked into the general pattern of distribution in the industry, what kinds of distribution systems the various firms used, the number of outlets that seemed to exist in different areas, the different kinds of outlets. There are so many different kinds of retail firms that handle television sets, such as general appliance stores, department stores, specialized radio stores, discount houses and so forth. I tried to get some notion of the character of distribution practices by various firms in the industry so that I would have a general background on the specific territory that would be important in studying this particular industry.

Q. What types of distribution patterns did you **[2880]** observe, sir? A. Well, I observed that virtually all the significant brands of sets seemed to be represented in all the markets that I could find out

anything about there seems to be large numbers of televisions sets outlets of these different kinds. As I mentioned, many outlets carry several brands of sets and a wide availability of the different branded products and different products with variations offered by each brand.

Q. Did you observe any patterns of distribution policy among the different companies? A. Well, there seemed to be a sharp difference between, let's say, two companies with the largest market shares which follow what I would call a saturation distribution policy. That is a distribution policy aimed at saturating the market with exposure to the brand, a distribution policy aimed at getting what might be described as a maximum number of outlets or at least a very large number of outlets. Other firms in the industry seem to use what I would call a selected distribution policy whereby they apparently choose to have their brand exposed in a selected number of outlets and locations rather than to have their **[2881]** brands present wherever television sets are sold. This is a typical contrast that one observes in many industries.

Q. Could you name some of the other industries?

Mr. Miller: Excuse me, Your Honor. I object at this point on the ground that this testimony is not relevant to the facts and situations that we are confronted with in this case and base my objection on that ground.

Mr. Popofsky: I think we have gone into it already.

The Court: Well, subject to any motions you may make later.

Mr. Miller: Yes, Your Honor. May the record show that it is a continuing objection?

The Court: Yes.

Mr. Popofsky: Q. Professor, my question to you was simply whether you could identify for us other industries which to your knowledge have patterns of distributions similar to those? A. Well, many of the home appliance industries do where some companies want to have their brands available in all possible outlets, and others who have only a few selected outlets in each area. The automobile industry is an example of highly selected distribution—at an extreme of selectivity we might [2882] say. So hard goods in general display a range between high selectivity and the saturation.

Q. I would like to come to the subject at hand and ask you if in connection with your testimony today you were asked to evaluate a set of economic circumstances on the basis of certain accomplishments? A. Yes.

Q. In connection with the testimony you are going to give, would you detail for us the assumptions which you were asked to commence with? A. All right. I believe I can do that readily. One is the fact of a number of brand alternatives in the market in question. We would be discussing a situation in which there were manufacturers and dealers of some type, and a number of manufacturers with different brands, different quality characteristics of the brand, different products within each brand grouping.

A second characteristic that we assume to be of importance here is: does the manufacturer deal directly with the dealers, that they don't deal through some intermediary but deal directly with the retailers, whoever they may be.

A third characteristic is this policy of selectivity that I have just mentioned, that the manufacturers of a [2883] type we are going to be discussing, do try to select individual dealers in specific areas that will carry their products to the consumers in a way the manufacturers think is suitable, and that suitability might be anything but it would certainly include display, advertising, presentation of the product in the place for sale, the location of the outlet itself that is available to people in the market, and that sort of thing.

So selectivity rather than saturation distribution is what that is.

A fourth assumption was that the dealers were selected by location, that there was a notion of a dealer operating at a particular location in a particular geographic area.

A fifth assumption was that the dealers by and large were free to handle any product they chose. That is, they might handle many competitive brands from different manufacturers if they chose to do so, and that the manufacturer of course might select any dealers he chose and that the dealers were in no way restricted in their choice of customers or let's say the out-reach of their advertising or any other device they might choose to make sales from their location, that they could sell anybody they liked.

Q. I have asked you to assume all those facts with reference to a particular manufacturer, have I not? **[2884]** A. Yes, Sylvania.

Q. And I have asked you to assume those facts obtained in Northern California in or about 1965, is that right? A. That is right.

Q. Given that set of assumptions pertaining to distribution practice and given the television industry as you found it in your studies, sir, did you form an opinion on the basis of the industry's characteristics concerning the competitive success of the kinds of distribution practice which you assumed to exist? A. Yes I did.

What is the opinion you have formed? A. Well, my opinion as to the competitive impact of this type of distribution practice and the type of industry we have been discussing can be divided into two levels.

One is with respect to its impact on competition among manufacturers and brands, and one with respect to its impact on competition among outlets and brands in outlets in a specific local market or area.

We might take the second first. Under the assumed circumstances in any local market, and indeed, it is factually true as far as I can see in any local market of any size with respect to television sets, there would tend to be a **[2885]** large number of brands and outlets offering television sets for sale to the general public.

Many of these outlets will offer multiple brands. Some of them may choose to offer only one brand but many brands will be offered through many outlets. Some will be offered only through a few outlets.

In that circumstance the decision of a manufacturer to select one particular outlet or another particular outlet as the outlet distributing his particular brand has no effect on the strength of competition in the market as a whole because there are so many outlets, so many competitive alternatives throughout the market.

Competition in the market doesn't get stronger because the number of brands in outlets, for example, which may be from 99 to 100. That just doesn't have any competitive impact. There is competition if there are 99 and there is competition if there are 100 and the change from 99 to 100 is just not a significant change.

So where you have a situation where we have been assuming here with a number of brands and a large number of outlets, all the outlets offering various combinations of a brand, a change in one or two or even three particular outlets as to whether a carrier couldn't carry a particular brand is just not a very significant competitive matter.

Indeed, I would say it is not a significant competitive matter at all.

[2886] Q. That is to say, if a dealer elects or does not elect to carry any particular line? A. That's right. As long as the brand is represented in the market.

Now, adding or dropping a brand from the market might have a very significant effect depending upon the numbers of brands.

Or any kind of policy, let's say, among all manufacturers, such that no new dealer could come in at all anywhere in the market.

One might wonder how that would come about. But so long as dealers can deal with many manufacturers and many manufacturers deal with many dealers, that is the essence of competition in the distributive sector of the industry and that brings competition to the consumer.

The particular choice of a dealer by a manufacturer is no more an element in determining the strength of the competition than, for example, the consumer's choice of one product over another.

It is the consumer's ability to choose that is competitive. The consumer looks at the various products and has the option of buying whichever one he thinks suits him best.

He makes his choice. Now, whatever his choice is the situation has been competitive as far as he is concerned, [2887] because he has had a very free range of choice among all these alternatives. So it is his freedom to choose among the range of choices available that is the essence of competition, you see, not his particular choice.

The same thing applies to competition at the dealer level when the manufacturer is setting up his dealerships.

Q. You mentioned that there were two levels in which you were going to approach the problem. A. Yes. There is the question of the effect of a particular distribution policy on competition among brands, that is, upon the strength of a brand in the market as in competition with the other brands that are also existing there.

Here I think we have to assume that the executive firms such as Sylvania or any other, try to develop their marketing policies in the way that will make their brand and their firm as strong as possible in the market.

Now, since Sylvania occupies a relatively small position in the television market and it is therefore a competitive element in that market, I think the television market would be less competitive if Sylvania would be out of it, because the number of brands, after all, are 10 to 12.

Sylvania is in there. They are at the bottom, but [2888] in there.

Now, if we squeeze out the bottom firms from that market, then I think we would see a decline in competition among brands in all the major markets in the country. Therefore, if this distribution policy or any particular distribution policy has the effect of strengthening Sylvania or any other smaller firm as a competitive force among the other firms in that market, many of which are much larger, then I think we have to look carefully at that policy as an element in competition, indeed as a pro-competitive policy among the brands and the manufacturers as a whole.

Q. In the opinion which you have just described for us, sir, did you ascertain whether the type of distribution policy that you have assumed to be em-

ployed was in any way beneficial to competition in the sense beyond the one you have just given? A. I think I just responded to that by saying that I think that anything that maintains a range of competitive alternatives throughout the market strengthens competitive forces there.

Q. Does it have any effect from that standpoint on the dealers, this kind of distribution practice? A. I don't want to say no, but the effect really is only on the precise number of dealers and who by name [2889] the dealers are. You see, it is not on whether there are many or few dealers in the total market. That is determined by the fact that there are many manufacturers with different policies. So there are many dealers in the markets with different combinations of brands and products in each dealership. That is what makes the market competitive.

Q. Assuming a distribution practice of the type that you are asked to assume, is there any anti-competitive characteristics that you can identify? A. I don't see any, because I feel that competition in the market has resulted from the large number of brands and dealers available throughout the system. And that any decision about one or two or three in that setting just doesn't affect the level of competition. We think that the competition in the market results from this whole group of people trying to make sales to a group of customers.

Q. Does your analysis of the competitive characteristics of the system relate in any way to the manufacturer's policies with respect to price? A. Not

really. Because if we have effective competition among the brands in the final market, then the prices in the final market, the prices at which people [2890] actually purchase, then are going to be set by competitive forces.

Now, I can adopt any policy I want to with respect to naming prices. For example, on my own books, I can suggest to the publisher that they put $50 price tags on my books. That would be my pricing policy. The publisher, fortunately, is too smart to respond to that suggestion.

But it wouldn't do any good if he did, because, you see, my books would just be out there and nobody would buy them. Why is that true?

Because there is a lot of competition. There are many other authors of books on the same subjects that I write on. Of course, I think mine are very good and the other authors think theirs are very good, and the readers can decide.

The prices have to be set by competition among the various authors of books. So that my attempt to name an outlandish price would be met by my not making a sale. It wouldn't affect the market price at all, which is going to be author-set by my competition. I am just not participating.

So in this competitive structure that we are talking about here, I don't believe that the particular price setting formula practice techniques or whatever of a particular manufacturer really has any impact on what happens [2891] in the market. If you raise his price beyond the price that is acceptable under the competitor he won't make any sale.

That is what competition is.

Q. What if in a particular market area this policy ended up with only one or two dealers carrying a particular brand. Would that produce an anti-competitive effect in any sense? A. I don't see it. The customers in the market still have a wide range of choice. The customers who might buy from that dealer might buy from other dealers other brands or they might look elsewhere in neighboring communities outside the immediate environment to see what brands were available there and what prices were available there and if there is any great difference in prices then they might find it attractive to go to the neighboring community and make a purchase.

* * *

Cross Examination

By Mr. Miller:

Q. And now, Professor Preston, as I understand it, **[2892]** you have just espoused a theoretic analysis for us which bears on the distribution system as you understood Sylvania to use it during certain years, correct? A. Mr. Miller, I have given an analysis that I hope is consistent with the assumptions that Mr. Popofsky outlines, wherever they apply.

Q. And in doing so, Professor Preston, you have also relied on certain, what you would call, I believe, secondary sources of information, correct? A. Yes, that is correct.

Q. These are the statistical surveys which you referred to initially in your testimony? A. I used those to get some basic factual information concern-

ing the kind of economic situation, the kind of marketing situation that was involved in this matter.

Q. Exactly. And you also relied, as you just mentioned, on some factors given you by Mr. Popofsky? A. Some factors given me by Mr. Popofsky. I should say some information given me by Mr. Treviston.

Q. Well, you talked to Mr. Popofsky about this matter, did you not? A. Yes.

Q. And Mr. Treviston is the attorney for the Sylvania Electric Products? **[2893]** A. Yes, sir.

Q. Now, so you got information from Mr. Treviston, the corporation attorney and Mr. Popofsky, the attorney representing the company in this action, and you also relied on certain secondary statistical sources, correct? A. Yes.

Q. And you made what would be called a theoretical analysis, correct? A. Yes sir.

Q. As distinguished from a practical survey? A. Well, sir, I tried to learn enough about the specific situation to see what its general characteristics were, and then work with the general characteristics.

Q. And in doing so, sir, did you make any personal surveys? A. Any personal surveys?

Q. Yes, sir. A. You mean going about in Northern California?

Q. Yes. A. Well, I lived here 11 years, you know, and during this period, the period of the case. I am familiar with the area. I did not make any kind of field studies of the television industry in Northern Calfornia or anywhere else.

Q. All right, sir. **[2894]** Did you make any other what may be termed empirical analysis or study of

the industry in general, the TV industry or the retail structure on the West Coast, particularly in Northern California? A. I don't believe there is anything that hasn't been mentioned. I said I tried to survey all the literature I could find both general and specific. I didn't find too much, but I did make an effort to do that.

Q. All right. Professor Preston, so that we can get this clearly in mind at the outset, has there been anything in the nature of a breakthrough, an economic breakthrough and analysis of these kinds of problems in the last five or six years that you know of? A. Nothing I would describe as a breakthrough, I don't believe.

Q. All right. As I understand your testimony, you talked about the competitive effect of this assumed distribution system on two levels of competition, correct? A. Yes.

Q. On the manufacturing level and on the retail level? A. That is correct.

[2895] Q. You used the term distributors interchangeably in this sense with retailers for purposes of our discussion? A. In my testimony here I probably did. I tend to do that. It is quite clear that we are dealing with only two levels in the market, a manufacturer and his dealers. There are only two levels.

Q. Now, Professor Preston, as I understand your testimony, you said that at the retail level it was your conclusion based upon your theoretical analysis that there was no anti-competitive impact of this particular distribution system, is that a correct statement?

A. The type of policy that we outlined in the assumptions?

Q. Generally speaking. A. Generally speaking, yes, that is my belief.

Q. Now, that conclusion was based, of course, upon your analysis? A. Yes.

Q. And your analysis in turn was based upon certain factual assumptions, correct? A. Certain factual assumptions. Let's just say based on certain assumptions.

Q. And you received some portions of those [2896] assumptions from either Mr. Treviston sitting back there or Mr. Popofsky, did you not? A. I developed the assumptions to reflect what seems to me to be some of the critical aspects of the marketing arrangements in this case, yes.

Q. What I am getting at is didn't Mr. Treviston and Mr. Popofsky tell you something about what you should assume Sylvania distribution policy to be in 1965, for instance? A. They told me something about what they believed it to be. I believed they told me the truth.

Q. What I am asking you is precisely didn't they say, now, in making your analysis, Professor, didn't they say in substance, I want you to assume that the policy was such and so? A. I wouldn't say that that happened really, Mr. Miller. I would say that I asked them what the policy was. They told me to the best of their ability what it was. Then I described that this way in the conversation between ourselves and we came up with a set of descriptive terms that de-

scribed it to us. I think I described it in general. But do not rely on me for the facts about it. I did obtain the facts from them, yes.

Q. Fair enough. **[2897]** So however you want to say this, Professor, you got some facts from the attorneys? A. Yes.

Q. And in making your assumptions and your analysis, in part the assumptions and the analysis were based upon those facts which you obtained from the attorneys, correct? A. Yes.

Q. So if as a matter of fact, some of those assumptions were in error, it could be that your conclusions might be in error to the same extent, correct? A. My conclusion might still be right on assumptions, but the assumptions might not be relevant to the matter at hand.

Q. You are saying the same thing? A. Right.

Q. Now, sir, as I understood your testimony as it related to the retail level of competition, you are saying to us that, as you understood it, the outlet restrictions imposed by Sylvania on its dealer structure, that is, this business of telling a dealer from which location he may resell their product, their brand, that type of restriction had, under your assumption, no connection with resale price maintenance; isn't that true? A. My analysis of the effects of that type of restriction in this type of situation where there are **[2897-A]** multiple manufacturers and multiple dealers is not affected by the particular price policy of any manufacturer.

[Continued on next page. Nothing omitted.]

[2898] Mr. Miller: Q. Now, Prof. Preston, the question was precisely, was your analysis based on the assumption that the Sylvania policy tied a location restriction together with a price maintenance restriction? A. That is not a relevant assumption for my analysis.

Q. I understand your testimony, but I am asking you again to answer the question precisely. Did you understand what I was asking? A. Yes, sir, I do. You asked if I made an assumption about the price policy. The answer is: I don't make any assumption about the price policy because it is not necessary to make any assumption about the price policy.

Q. But I can take your answer as being no, then, that in your analysis you did not consider the effect of a price maintenance program tied to the location restriction program that Sylvania may have used in 1965. A. Mr. Miller, I considered and I did carefully consider whether or not the pricing policy of any one or all manufacturers would affect this analysis, because if it would, then I would have to make specific assumption about the pricing policy. The result of my consideration was and is that if there is a wide range of choice in the final market, we will rely on the competition in the final market to set the limits of prices in the final market and after that it doesn't make any difference how I choose to set my **[2899]** price because no one will buy if I get out of line with my competitors.

Q. Well, I think I am a bit confused, Professor. I was simply trying to find out whether or not in

making these assumptions of fact that you received from the attorneys you included the assumption that there was a price maintenance program tied to the distribution policies of Sylvania. A. I did not include the assumption that there was, nor the assumption that there was not, nor did I include any assumption about the rainfall in Sacramento.

Q. Well, sir, disregarding the rainfall problems, is it not a fact that the price maintenance has a serious anticompetitive impact on the retail level?

Mr. Popofsky: Your Honor, I will have to object to that question. The words "price maintenance" is the most vague of concepts, particularly in a context where the views of what pricing policies may or may not have obtained in 1964 and 1965 is seriously controverted.

The Court: I really think the professor understands this. Do you understand what he means by "price maintenance"?

The Witness: May I ask, Your Honor, if he means specific resale price maintenance under the California Resale Price Maintenance Act, or something like that not under the Act?

Mr. Miller: Q. Let me ask you, since you mentioned **[2900]** that, are you aware that Sylvania fair-trades its products at the present time in California? A. I have been told that, yes.

Q. Did you assume that it so fair-traded its products in 1965 also? A. No, I did not.

Q. You understood to the contrary, didn't you? A. I understood that they had a suggested pricing policy in 1965.

Q. All right. Now, let me sort this out. You said, number one, that you did not assume as one of your "givens" that there was a price maintenance program tied to this location practice called the elbow room, correct? A. Correct.

Q. All right. And would you agree with me that possibly if that in fact was part of Sylvania's policy, and I mean by that, if they did have a price maintenance restriction tied to a location practice restriction, that that type of distribution policy might have different competitive effects than those you theorized about? A. I really don't believe it would.

Q. Well, didn't you write in this Duke Law Review article something about price maintenance, sir? A. Perhaps you better quote or cite it.

Q. Excuse me. At Page 50, I'm reading from "Law **[2901]** and Contemporary Problems," Volume 30, 1965, School of Law, Duke University, and specifically in this volume an article entitled "Restrictive Distribution Arrangements, Economic Analysis and Public Policy Standards," by Lee E. Preston. That is the article you referred to in your direct? A. Yes, that's correct.

Q. Page 520, the second full paragraph, you state, sir:

> "On the contrary, one of the classic motives for resale price control is to insulate the supplier from the forces of price competition among distributors"——

And used in this context, by the way, that would include retailers, correct? A. Oh, yes, definitely.

Q. "——and indeed to enlist them as partners in the pursuit of monopoly profits." A. This says one of the classic, is that the way the sentence begins? "On the contrary one of the classic . . ."

Q. Yes, ". . . one of the classic motives for resale price control." A. One of the classic motives.

Q. Yes. A. Yes. It doesn't say one of the classic effects of resale price maintenance.

Q. All right. But I understand from your testimony, **[2902]** sir, that you did not take into consideration the motive or the purpose for which the distribution policy of Sylvania was installed, is that correct? A. No, I have the impression that the policy of selective distribution was developed in order to assure Sylvania of representation across the markets that they were interested in, trying to make their sales in, and to assure that this representation would be of a character that they thought was most beneficial to making sales as well as possible, that is, in terms of location, display, inventory, the appearance of the retail store, advertising, and so forth. That is my understanding.

Q. Exhibit F, as I understand it, from their operational sales manual, Prof. Preston, says this about the policy as it existed in 1965. You have heard the term "straight line distribution"? A. Yes, I heard it.

Q. To help explain this particular policy. A. Yes.

Q. "S.L.D"—I am quoting from the second page of the Exhibit F:

> "S.L.D. also eliminates same brand competition. Sylvania wants fewer dealers and quality rather than quantity by not over-franchising. Straight line distribution eliminates vicious price-cutting and **[2903]** establishes suggested prices that enables each dealer to make a fair profit and each consumer to receive an outstanding value."

It goes on to say:

> "Elbow room gives every Sylvania dealer a geographic area in which to sell our Sylvania products."

Were you given this information as part of your assumption, sir, in making your theoretical analysis? A. I was, and when I read it I said I thought those were very unfortunate statements, since they were not true.

Q. Now, Prof. Preston, as I understand your testimony, in your analysis it doesn't seem to make any difference whether Sylvania itself decides where dealers ought to be placed or the forces of competition make that decision; is that what you're saying, sir? A. I think that Sylvania is in competition and will try to get dealers in locations which will make it as effectively competitive as it can possible be. If they don't do that, I don't know what they are doing.

Q. Now, let me ask you again, in a given market, not necessarily only the television industry, but in any other given industry where we are concerned about fairly high-priced units, is it not true that the forces of competition at the retail level to a great extent

control the movement of locations and the places where dealers stores are [2904] actually located within major markets? A. I don't mean to be unresponsive, Mr. Miller, I don't quite get the thought. Would you try again?

Q. Let me try again. Is it not a fact that the number and spread of locations of outlets in a given industry, in a given market, are a function of the competition at that level? A. Broadly speaking, yes.

Q. And your analysis, sir, you didn't assume, did you, that part of Sylvania's policies were to respond to a dealer's complaint about another dealer's location and to control location in that manner? A. No, I did not assume that.

Q. You didn't hear anything about that, did you? A. No, not specifically.

Q. So if in fact, Sylvania set up their location or outlet patterns and markets in response to other Sylvania dealer requests or demands, that would certainly change your conclusion somewhat, wouldn't it? A. Oh, yes, it would. It would. However, I would wonder how they got the pattern they have, if that's the case.

Q. All right. As a matter of fact, that would be highly anticompetitive in impact, would it not? A. Well, again, we have to assume what other [2905] characteristics of the market might be, but it would certainly demand a new analysis.

Q. And it certainly could be anticompetitive, could it not? A. It could be.

Q. And certainly your analysis and your conclusion would not necessarily under that set of facts, right? (Sic) A. Not necessarily. We would have to make a new analysis.

Q. Now also did you assume that Sylvania coerced, that is, used coercive means in any way to achieve dealers to locate in any particular way or pattern? A. No, I have no notions about coercion in this analysis.

Q. And if there were, of course, these elements involved in the enforcement of any of these policies that Sylvania had, that in and of itself could alter the conclusions about the competitive impact, could it not?

Mr. Popofsky: Your Honor, I understand the words "coercive element" when someone twists my arm, but I don't know what "coercive element" means in this context. It seems to me this is just a phrase which counsel is using, asking in the abstract about. I do not think it is self-defining. If he means agreements, that's one thing. Object to the question on those grounds.

[2906] The Court: More or less abstract; it is also cross-examination.

Mr. Miller: I didn't mean to confuse you, Professor. Do you understand what I am getting at?

The Witness: Well, I guess we could think about some kind of personal coercion, you know, physical threat, or something like that. I certainly don't have any idea of that sort.

Mr. Miller: Q. Business coercion? A. Business coercion is usually associated with some sort of monopoly power and I don't see that Sylvania has any monopoly power.

Q. All right, sir. A. So the answer to your question is: If there were a situation where there could be a business coercion, you know, all right, a new analysis would be required. I don't see either the assumed or the actual situation in the television manufacturing industry as one involving monopoly power on the part of Sylvania, and therefore I don't understand what its basis for business coercion would be.

Q. All right, sir. If Sylvania practiced coercive techniques to prohibit a dealer in one territory from selling its products in another territory, would you call that business coercion? A. Your quote "if" contains the answer yes.

[2907] Q. And—— A. If it is business coercion, then it is business coercion.

Q. All right, but that is a form of coercion if Sylvania would tell a dealer I am going to cut your credit line, I'm going to sue you, I'm going to lock up your stores, I'm going to do everything I can to put you down the drain if you try to sell your products in another territory, that's business coercion, right? A. All right. All right, yes. All right.

Q. All right. You didn't assume anything like that conduct in making your analyses? A. No.

Q. Now, is it not true that your conclusion would also or may also be changed if you had assumed that any given Sylvania dealer became to rely on Sylvania to a greater extent than one would normally see in

this relationship between dealers and manufacturers in the marketplace, that is, if there are any unusual reliances on behalf of a dealer, this would change the analysis also, would it not? A. If the dealer gave up all other options? Is that your thought?

Q. No. sir. A. The dealer is not able to do anything but carry Sylvania products for some reason?

[2908] [Q.] Let me quote to you from your article here, sir. I am quoting from Page 509, second paragraph.

> "Finally, there is a distinction to be drawn between the balance of competitive forces throughout a broad market and strength or weakness of bargaining positions of particular buyers vis-a-vis particular sellers. For example, when either party to a transaction has come to rely upon the other for more than the normal provision of merchandise and service available elsewhere in the market, the dependent party's bargaining position becomes weakened and the dominant party may attain a power of coercion over this particular trading partner in no way paralleled in its dealings with other enterprises."

Now, you wrote that in your article, you recall that? A. Yes, I do. Yes, and I believe that's true.

Q. You're talking about that kind of a situation that I was trying to describe to you, right? A. You want me to talk about that kind of situation.

Q. I just want you to answer the question, Professor, as to whether or not, first, you took that set of circumstances into account in your analysis in this

case? A. Yes, but read the first of that sentence, if you would, Mr. Miller, because it draws the distinction between the state of competition in a market and particular [2909] bargaining arrangements between particular parties. You see, one of the points there, if I may suggest, one of the points I was trying to make in that particular point in that paper was that particular individuals may have favorable or unfavorable trading relationships in their own personal viewpoint without it having any effect at all on the strength of competition in a market, because there may be many other individuals effectively competing throughout the market, the strength of competition in the market may be very great, but some particular pair of trading parties, one may be at a great disadvantage with respect to other. These are two different matters. And just because it happened that some one trading party was at a disadvantage with respect to some one other trading party, would not imply at all that competition in the market wasn't as strong as it could possibly be.

Q. The question, Professor, was, did you take that set of circumstances into account in making your analysis? A. Maybe the answer is like the price question, the relationship between individual parties do not matter in terms of strength of the competition in the market as a whole. They do not matter. Only if everybody is excluded, you see. Only if everybody is coerced, only if everybody is involved do we have a market wide of that. It's back to whether I buy the blue tie or the red tie, you see. This [2910] competition is in my ability to choose.

Q. Now, Professor, you touched on territorial restrictions. Now, in making your analysis did you assume that Sylvania prevented its dealers from selling its brand outside a certain defined geographic territory? A. I explicitly assumed the contrary, I believe. I explicitly assumed that the dealers were not restricted with respect to their choice of customers.

Q. And that means also that they were not restricted as to the geographic territory in which they were allowed to resell? A. That's correct.

(Continued on the next page; nothing omitted.)

[2911] Q. And if it is a fact that this policy, Sylvania's policy, was to the contrary, that might also change some of your conclusions, right? A. It would change the whole analysis.

Q. As I understand this, one of the effects of this is that—I think you called it—it is a selected distribution system. A. That is the term I would use to describe it.

Q. One of the effects of the selected distribution system is to limit the number of same brands in any given market area. A. I think its effect is to determine the number.

Q. That is, Sylvania in this case would be determining the number that it thought proper in any given market, correct? A. That would be my understanding; the number, the location, what they did.

Q. Right. If Sylvania retained their prerogative in dealing with its dealers? A. That is my understanding.

Q. Let me show you a chart that we have in evidence, which is Exhibit F-X, and for the purpose of

my question I want you to assume the correctness of some of [2912] this information, if you would. It purports to show the Sylvania franchise dealer structure in Sacramento? A. May I say I have never seen this chart before so I will have to take a minute to look carefully at it. I don't know whether the jury has seen it or not. They probably have.

Q. In Sacramento, 1961 to 1967. A. All right.

Q. I might tell you further this information was received from Sylvania in the form of interrogatories under oath and assume for that reason to be accurate.

Mr. Popofsky: We have one adjustment. That is Sherman and Clay in 1965 and '66.

With that adjustment your representation would be sensible to me.

Mr. Miller: All I am saying is that regardless of Sherman and Clay's existence or non-existence as a dealer, this is the information that was given to Continental TV under oath in the interrogatories and for that reason we are making that representation.

Q. I found in 1965 apparently Sherman and Clay, which is not shown on a chart, did in fact carry about $10,000 worth of Sylvania products on the floor in their Sacramento store, but that in 1966 Sherman and Clay [2913] terminated the franchise with Sylvania.

With that type of additional information you can see that in 1961, sir, there were something like 19 dealers which handled the Sylvania brand in Sacramento. Do you know whether or not the elbow room policy of distribution was in effect in 1961? A. My understanding is that it was not.

Q. In 1962 the number of dealers are still about 19. A. I believe that is right.

Q. And do you know whether in 1961 [sic] the elbow room policies were in effect? A. My recollection is that that was the beginning date, but again this is recollection.

Q. In 1963 the market structure for Sylvania dealers dropped. This is one of the selective systems, that it reduces the number of dealers handling that particular brand in a particular market. A. I don't know anything specific about the discontinuation of those dealers handling Sylvania products. I should emphasize that. I don't know in any one individual case or anything general about the whole group of cases about who made the decisions, about who decided to add or [2914] drop. That is a piece of factual information that I just don't know.

Q. The question was: Is it not a fact that the impact of what you call selective distribution systems on any given market is to reduce the number of same brand dealers? A. I have to answer that I do not know. In a market with no dealers I would presume that a selective distribution system would establish fewer new dealers than a saturation distribution system, whether you were to go along and discontinue previous dealers or not. I think it depends on a case by case situation. There are certainly some Sylvania markets where they have a tremendous number of dealers and have had them for a long time.

Q. Let's go to '64 and '65. The number of dealers goes down to three in those years. Substantially all

purchases are being made by only one dealer, Handy Andy, until 1966 where we get to the position where only Handy Andy remains in this particular market. Again isn't that a likely result of this particular selective distribution system, a diminished number of dealers in any particular market area. A. As compared to a saturation system?

Q. Sure. **[2915]** A. Yes, of course that is the essence of it.

Q. And almost by definition then the result is a lessening in the competition between same brand dealers in any given market, is that correct? A. I don't know how competitive they were to begin with.

Q. Does it not follow that if you go from a market that has some 19 competing dealers in the same brand to a market that has two or three, that the competition between those dealers is most likely to be diminished. A. Quite frequently the convenience of purchasers is going to be diminished because they will have to go out to the market instead of being closer. Competition depends on how people behave and also it depends on who else is in the market and where the other dealers are. If there is a great deal of competition between Sylvania dealers and RCA dealers and Zenith dealers, and so forth, then whether you have two, five ten or a hundred Sylvania dealers is not going to matter at all because you are going to have all the competition you can have anyway.

Q. In this article didn't you say that such an arrangement, such customer or territorial restrictions reduces same brand competitions? A. The article

is not about this type of **[2916]** distribution policy at all.

Q. Let me see. You say here on page 507:

"Restrictive marketing arrangements may be adopted both singly and in combination to accomplish particular purposes. Taken individually, the principal types of restrictions and their effects may be summarized as follows:

"1. Customer-territorial restrictions limit distributors in their choice of customers or sales areas. They thus reduce the direct competition between distributors of the same line of product."

A. But we agreed, I think, that the assumptions used in this analysis specifically assume the contrary of that—specifically assume the contrary.

(Continued on next page.)

[2917] Q. Well, Professor, let me ask you that question. If you assumed that Sylvania, as part of their policy, restricted the territories into which a dealer could go with their brand, then the rule would be—the result would be anti-competitive—isn't that right—like you say in your article here? A. If they restricted the dealer's ability to sell to any group of customers, whether these customers are identified geographically or any other way, then we would be going toward the type of analysis presented in this article. You see, the Sylvania system, as we have described it in our assumptions here, wouldn't be termed restrictive in terms of the analysis of this article. If you start back with a definition of restrictive distribution arrangements at the first of the article, this locations clause would not fit.

Q. Professor, what I said and what I asked you to do was to assume not what you were told by Mr. Popofsky and the other gentlemen from Sylvania, but to assume for the purposes of my question, sir, that Sylvania restricted the territories in which Sylvania dealers would resell their brands. I simply asked you if that wasn't the type of anti-competitive impact which you were talking about in this article. **[2918]** A. I definitely was talking in this article about restriction on territories and customers, yes, definitely.

Q. And that impact is anti-competitive. A. It has an anti-competitive dimension. The theme of the article is that it also has a pro-competitive dimension but neither of those dimensions are involved in the assumed circumstances I discussed with Mr. Popofsky.

Q. That is right. You were not asked to assume that factual data, correct? A. Okay, correct.

Q. Did you in making your analysis make any assumption as to whether or not Sylvania's policy included any tie-in arrangements between products whereby, for instance, Sylvania made a dealer purchase so many 21-inch color sets to get so many 25-inch color sets? A. No. I did not have any specific notice about tie-in arrangements. I do have an idea that one of the modes of selective distribution is to deal with dealers who will carry full lines but not because of a tie-in arrangement. That is because they want to carry a full line.

Q. So if Sylvania did require, during some portion of '65 or '66, its dealers to purchase other merchandise in order to get desired merchandise, that could have an anticompetitive effect, could it not? A. I doubt it but I would rather say that I didn't **[2919]** consider anything about tie-in specifically at all.

Q. So you wouldn't want this jury to conclude anything either way, one way or the other, about that subject from what your testimony has been? A. No. For tie-in arrangements to have significant effects on the market there has to be monopoly power. There has to be a monopoly element to which non-monopoly elements are tied. If there is no monopoly element to begin with, then there is nothing to tie anything to.

Q. Referring you again to your article at Page 508 in the first paragraph, don't you say:

> "Product restrictions thus foreclose particular distributors as routes of market access for competitive products and as a result may weaken competition among distributors directly."

A. Yes, and that means limitation in district as to the other products with which they can deal, yes. That is very significant anticompetitive limitation. It is my impression that limitation doesn't arise in the circumstances we are discussing.

Q. You ignored any of those implications because you weren't told about any implications. A. I asked about them and I was told there were none.

[2920] Q. In this article you wrote for the Duke Law Review, do you recall this portion where you talked about serious versus non-serious types of manufacturer restrictions imposed upon dealers? A. Yes.

Q. You said something to the effect that restrictive agreements or policies that don't really alter the behavior of the dealer or dealer's effectiveness were what you would call a non-serious type? A. That is right. I say dismissed from the analysis, trivial restrictive clauses that don't change anybody's behavior.

Q. And then you contrasted those with those policies which in your mind to some degree did affect the behavior of these dealers. A. Yes.

Q. And you go on in the article and you give some examples of these unimportant types of restrictions. Do you remember that? A. Yes, I do.

Q. And you included in that category of unimportant restrictions, things like full line displays. A. Yes.

Q. Minimum stock levels? A. Yes.

[2921] Q. Advertising requirements? A. Yes.

Q. Things like this. A. Yes.

Q. And you also gave some examples of some serious restrictions that did alter the behavior of the dealers, didn't you? A. Yes.

Q. And those included restrictions concerning resale prices, correct? A. Yes.

Q. And they also included restrictions involving retail territories of customers? A. Yes.

Q. Is it not a fact that in markets which you studied—and I assume we are talking about the Northern California market particularly, and in the industries you studied, the T.V. industry—it is a fact, is it not, that the nature and extent of the customers

which a retailer can reach is a function of his location. A. Yes.

Q. And of course the territory in which he is able to make sales reach out is a function of his location or locations. A. Yes.

[2922] Q. And even the nature and extent of the competing firms he must work against is really a function of his location or locations, is that right? A. Yes.

Q. No question about that, is there? A. No real question about that, although the lines are far from hard and fast and there are some customers who are very mobile and other customers who are not mobile at all. So that the out-reach of a firm in a particular location cannot be just drawn off a map as if it were a burning wall.

Q. Are you telling us and do you want this jury to believe it is a minor thing to tell a dealer—a minor thing, that you must have a full line display; to tell a dealer that he can't sell from a location, let's say in Sacramento, and he has to stay in his location in Sacramento [sic] if he wants to handle the brand? Is that what you are telling us? A. No, I don't think it is a minor thing. I don't believe this particular practice that we are referring to was listed either as major or minor in my list, was it? The particular practice, the location practice was not listed one way or the other. I would say it is between the minor, the trivial [2923] that we can dismiss and the major which is a restriction on the persons with whom one can deal.

Q. Like price restriction would be in the serious category. A. I think that real price restrictions, significant price restrictions that cause people to price things other than the prices they would choose are in the significant category. I also think of course that a lot of the superficial resale price policies of many manufacturers is in fact trivial because it doesn't set prices any different than what we have otherwise.

Q. But if I understand your testimony you made no such study of price maintenance as it related to Sylvania's policy? A. No, because it is my belief there is so much competition in the retail sales of television sets that it doesn't make any difference what any one particular firm does with respect to its prices. It can choose not to make any sales by putting the prices too high, but I don't think it can raise prices within the market.

Q. If I was a consumer in Sacramento in 1966 and I really wanted to buy a Sylvania brand—I really wanted a Sylvania set because I had watched the advertising nationally **[2924]** and had seen it on my friend's T.V. set and I was really sold on a Sylvania Home Theatre, I would have to go to Handy-Andy, the sole dealer in Sacramento and pay his price, accept his facilities and service department unless I wanted to go outside the County, wouldn't I? A. Unless you wanted to go outside the County. But before I went to Handy-Andy I looked at the metropolitan paper's ads on Sylvania sets and prices and I might drive over to Woodland or Roseville or Stockton and look at their Sylvania sets and prices

and look at a lot of other people's sets and prices in Sacramento. I certainly wouldn't deal with Handy-Andy if I thought his price wasn't competitive.

(Continued on the next page; nothing omitted.)

[2925] Q. All right. You would get in your car and you could drive down to the Bay Area, too? A. I could pick up a newspaper so easily. I would look at the Chronicle.

Q. You could buy from a newspaper ad. A. No, I could compare the price.

Q. You would have to drive though, would you not, to the store to buy a set? A. If I thought that was my best alternative, yes.

Q. Obviously. Now, did you make a study of how many people in the County of Sacramento read the newspapers from San Francisco? A. No. But having visited often in Sacramento County, I am aware that quite a number of people do.

Q. You don't know how many people in Sacramento read the Oakland Tribune, do you, in any given year? A. No.

Q. You want this jury to believe that a fellow in Sacramento after a hard day's work might come home, be in the market for a television set, get in his car, drive 120 miles on the freeway to a store in San Jose, find a good price on a set, buy it, take it home , have **[2926]** service problems with it and make these kinds of trips, do you think he would really do that?

Mr. Popofsky: I think that question would have to assume that he is dying to have a Sylvania.

The Witness: I don't mind answering that. I don't think he would have to. Because I think if he inquired as to the price of Sylvania sets in Woodland and Roseville and Stockton and Vallejo and looked in the immediate metropolitan paper to see what they were selling for down here or over there or in Fresno perhaps, he might find that indeed the Sylvania prices and indeed the prices for comparable sets of most other manufacturers were very much in line and that the price at Handy-Andy was a competitive price and he wouldn't mind going down there at all to get it.

Mr. Miller: Q. It would certainly be easier for that hypothetical consumer to shop closer to home if he had some choice between Sylvania brand prices, facilities and service departments, wouldn't it? Certainly would be more convenient for him if nothing else? A. It would be more convenient for him to make the price comparison of the brands. Of course, it would be yet more convenient if some government agency, for example, published the prices of all brands in all areas **[2927]** and distributed it everyday. That would be even more convenient. We could do a lot to make this more convenient.

Q. Now, I get the idea from your testimony that it is no real great concern to you if some small television dealer is forced out of the market, let's say, in Sacramento or prohibited entry. I mean, that is of no consequence to competition, if I understand your testimony? A. No consequence of competition. Now, I might not like it at all. It might be of concern to me but not because of its anticompetitive effects.

Q. Well, Professor Preston, do you remember talking about [sic] your article, talking about enterprise competition? A. Yes.

Q. What is [sic] enterprise competition mean in the way you use it? A. Enterprise competition appears in quotation marks there. It always does when I use it, because the term was coined by my friend and colleague, E. T. Grether, at the University of California in Berkeley. Enterprise competition means using all of the dimensions of the firm, whatever they are, to compete with other firms in the market. For example, if I may say so, the use of a selective rather than a saturation distribution policy by a firm like Sylvania is an example of enterprise **[2928]** competition. It is using a distribution policy that seems to make its competitive offering as effective and as attractive as possible in the market in competition with other major manufacturers. So that would be an example.

Q. Now, are you talking about such things as the dealer's personality, the manner he displays products, the kinds of decorations he has in his stores, whether he is aggressive or non-aggressive, these types of things, do they all go into this enterprise? A. Anything. Anything that differentiates or attracts customers, differentiates the firm, that is, or attracts them, might be a dimension of enterprise competition. The contrast is with, let's say, solely focus on price competition or solely focus on advertising competition. The idea is that every activity of the firm may be made a competitive dimension.

* * *

Mr. Miller: Q. Professor Preston, do you recall we were discussing enterprise competition? A. Yes, sir.

Q. And as I understood your previous testimony, [2929] you said in terms of pure competition didn't matter if the little guy was squeezed out at the retail level or was prevented from entering into a particular market, that is, the number of dealers didn't have a real effect, I think you said, on competition. A. The number of dealers provided it is not too small.

Q. Right. So that aside from this monopoly problem, it doesn't really matter if one given dealer is squeezed out of Sacramento, is that your opinion? A. In terms of the strength of competition in Sacramento. No it doesn't matter.

Q. All right. Is it not a fact that in terms of enterprise competition, it might well create more competition, be more competitive if this dealer who was trying to enter Sacramento was highly competitive in this enterprise? A. In some ways.

Q. Let's talk about that a minute. In other words, if you had a dealer who was highly promotional, let's say, in ways that the existing dealers in general were not in a particular market, the entry of that one dealer might well heighten competition, isn't that right? [2930] A. It might, yes.

Q. And conversely, to keep that type of dealer out of the given market might be anti-competitive in effect? I suppose that would follow? A. That would follow.

Q. Now, sir, did you make any study of Continental TV and its affiliated companies as to their sales in any given year? A. I did not make any field study of my own. I did see some data, but I do not recall it at this time.

Q. Did you make any study of Continental TV's display policies? A. The policy that I asked about specifically, of course, was whether Continental tended to be, let's say, a price cutter. At least as to whether Continental tended to be a firm that either cut prices directly or offered something substantially as an added inducement to make sales, I was told that was not the case.

Q. So your answer was no you didn't study Continental's display of policies, correct? A. No. Except that I did not learn anything about them that was distinctive. I asked what its distinctive characteristics were and I didn't learn anything.

Q. And you didn't make any personal studies, sir, of Continental's advertising techniques, did you? [2931] A. No.

Q. Or of Continental's merchandising techniques? A. No. I didn't study Continental in any detail at all.

Q. So you really don't know anything about the competitive effect in Sacramento specifically caused by the entry of Continental TV? A. Mr. Miller, I would not only have had to study Continental but all the other firms operating in Sacramento at that time to see whether Continental was different from other firms in the market or not. I did not do that.

Q. You did not do that? A. I did not do that.

Q. So you can't conclude on the basis of your theoretical analysis that in terms of enterprise competition, keeping Continental out of Sacramento would be neutral or have no effect on competition, can you? A. I do not know for certain that there is not some special mention of competition that Continental might have brought into Sacramento.

Q. So you don't know whether Continental TV utilized a novel or very effective merchandising program or whether it just followed along like a sheep behind the other dealers, do you? A. Not specifically.

[2932] Q. You weren't told that by Mr. Popofsky or this other gentleman? A. I wasn't told anything especially significant about Continental. In this respect, I did inquire but I did not learn anything. At least, I do not recall anything now.

Q. All right, sir. So that your opinion that you gave on direct examination does [sic] Sylvania distribution restrictions did no injury to competition were based on a set of circumstances containing the following facts: The restriction must not be used to maintain suggested resale prices; correct? A. We have been over that several times, Mr. Miller. I can't assume anything about price policies.

Q. And you didn't assume that—let me put it this way: You did assume in making that conclusion that dealers handling Sylvania brands must be located in other areas in such a way as to be able to reach customers in the Sacramento market, correct?

* * *

A. As the suggestion that there are dealers in **[2933]** other communities closer to Sacramento than New York and closer to Sacramento even than San Francisco, someone in Sacramento would look at some other dealers in some other communities if he wanted to look at television sets.

Q. Let me restate it. I am simply saying your analysis was based upon the assumption that other dealers handling Sylvania operated from locations which made it practical for them to reach customers in the Sacramento territory? A. Yes. To communicate to such customers, for customers to be in Sacramento, to know what prices were at other Sylvania outlets.

Q. And it follows then on the basis that the customers in the Sacramento market must have ready access to price information and location information concerning Sylvania brand products? A. Let's say that they could get much information without too much difficulty, yes.

Q. And you assume that these customers in Sacramento would have ready access to these locations where Sylvania brand products were sold, convenient access? A. That they could go there, yes.

Q. And you also assumed nothing, however, about any tying arrangements between products? We have covered that. **[2934]** A. Yes.

Q. You didn't assume that? A. No.

Q. You also assumed that this manufacturer of Sylvania imposed these restrictions itself without imposition from any other dealers? A. Yes.

Q. Of course, we have covered the fact that you assumed that the dealer who was being restricted was not abnormally dependent upon any particular manufacturer, no monopoly power? A. No, no monopoly power in the manufacture, yes, oh, definitely.

Q. Let's talk about that a minute. Did you study the color market from 1965 to 1966? A. Do you mean did I look to see how many manufacturers there were and that sort of thing? The answer to that would be yes.

Q. The question I meant to ask, Professor, was this: Did you study the supply and demand in the color TV market for the years 1965, '66, either nationally or in Northern California? A. Well, I had sales volumes data nationally and in Northern California.

Q. Did you know, sir, specifically that commencing **[2935]** in late August, 1965 an unprecedented demand for color television arrived with vengeance in Northern California? A. An economist wouldn't make that statement, Mr. Miller. We just wouldn't use those terms.

Q. Strike the word vengeance. A. Demand for color television itself increased very, very substantially in total throughout the sixties. Very much so. Nationwide.

Q. Specifically, did you know about that situation starting in August of 1965? A. August of 1965?

Q. It is not meaningful to you? A. It is not a key date.

Q. So as far as you were aware the demand for color television in Northern California simply was on

an increase during the sixties, correct? A. Yes. Of course, not a stable increase, not a regular increase from month to month. There are always lags. The important thing is that the market was growing very rapidly.

Q. I want you to assume for purposes of my next question or two that commencing in September of 1965 and continuing for a period of about 14, 15 months, thereafter, there existed an unprecedented consumer demand at the **[2936]** retail level for color television units of all brands. I want to assume further that precisely at the time of this unprecedented demand all major television manufacturers were caught with under production, they could not meet the demand, and that as a consequence they raised [sic] the number of color sets that they would sell to their existing dealer structure, and in addition they refused to put on new dealers and this was the situation I want you to assume across the board for all manufacturers. A. I assume that. I am not testifying as to accuracy?

Q. That is correct. A. All right.

Q. Given that situation, sir, is it not a fact that a given television manufacturer would in effect assume a certain monopoly power over an existing dealer as to color products? A. No. I don't quite see that. If there is a shortage in the whole market, there is a shortage in the whole market.

Q. All right. Let me ask you this question: Given those assumptions, and for example, assume that I am dealing with you and you are Sylvania and I am an existing Sylvania dealer and you have allocated a cer-

tain number of color [2937] sets to me; correct? A. Right.

Q. And for some reason I am not abiding by some distribution policy you have. Don't you have coercive power particularly in this type of market condition over me in that if I don't abide by your policies I can't get comparable brand, I can't go to other manufacturers and replace a possible loss of your line, don't you have a monopoly power in that connection? A. You are describing a situation where the seller, whoever the seller is, has the greater margins strength with some particular buyer because of these marketwide changes. Yes.

(Continued on next page.)

[2938] Q. Exactly. A. Yes. All right.

Q. That's fairly simple, isn't it? A. Yes.

Q. Straightforward. All right. So isn't that a situation you describe in your article where a dealer could under those assumed facts I gave you, become more than normally dependent to a manufacturer? A. For this period of scarcity?

Q. Yes. A. Of marketwide scarcity.

Q. Yes, sir. A. Yes, but note, if I may note, note that there hasn't been any change in the strength of competition in market price, all dealers have the same experience and you assume a situation where there is scarcity in the whole market, that's why the shift of bargaining power has taken place because of the scarcity in the whole market, so that all the dealers are similarly affected. The competition among the dealers is the same as it ever was. They are all

affected with respect to their relationship to all suppliers.

Q. And you assume also in your conclusion, of course; that the manufacturer does not act coercively as we previously discussed, isn't that right? A. All right, yes.

[2939] Q. And lastly, as we just discussed a moment ago, you have assumed in your conclusion that these restrictions work on a dealer who is not exceptionally promotional, is not highly different, and a dealer using unique techniques, perhaps, you assume that kind of a dealer—strike that. If you assume that kind of a dealer that would change your conclusion as we just discussed in some way, correct? A. Well, perhaps. Could we go back on that a minute?

Q. Well, this is our discussion of enterprise competition. A. Yes, enterprise competition. You see, Mr. Miller, since I lived in Berkeley at this time and I, indeed, was buying television sets at this time and in the end did buy a Sylvania set, as a matter of fact, although I had no notion I would ever be involved in this discussion at the time, I bought it from a dealer in Berkeley. I think I'm aware of what was going on the television market and television competition, certainly throughout the Bay area where at that time Continental was operating and many other firms were operating and I think we observed the high level of competition, although I can't ever recall even hearing the name of Continental as a dealer, for example, while I was a shopper in the Bay area television market. That sort of suggests to me [2940] that

the assumption that most of these firms are a lot alike in their promotional activities is not a stupid one.

Q. Did you ever during that period of time read the T.V. guide? A. Yes.

Q. Did you read the local newspapers? A. Yes.

Q. Did you listen to the radio advertisements? A. Yes.

Q. Did you watch television advertisements? A. Yes.

Q. And you never saw Continental T.V.—— A. I didn't say I never saw it. I'm sure I saw many advertisements and heard many advertisements. My point is that I do not remember the name Continental, which suggests to me that its advertising and promotional activities that I was exposed to was not very different than others.

Q. Do you know how many firms in the television retail business in the Bay area were using home demonstration promotional method of selling? A. No, I do not.

Q. Do you know in fact whether Continental T.V. and its affiliated corporations were using that, Professor? A. I have heard that they did use that at some time in some markets and that's the extent of my knowledge about it.

[2941] Q. Did you study the nature of Handy-Andy, the dealer in Sacramento? A. In any detail, no. I made no field studies in Sacramento.

Q. So you weren't aware of Handy-Andy's size in terms of resales in dollars or units? A. Oh, I have seen sales figures for many of the dealers, both Syl-

vania's figures and the figures that were in that Dun & Bradstreet report.

Q. Did you see them for Handy-Andy? A. Yes.

Q. Did you see them for Continental T.V. and its affiliates? A. I saw figures, yes.

Q. And wouldn't you say that those two firms, Continental and its group of stores on the one hand and Handy-Andy and its two stores in Sacramento on the other hand were comparable in terms of purchases and sales? A. I won't say they weren't comparable. I don't remember the numbers, I am sorry, I just don't. You had some numbers here a moment ago and I would be glad to look at numbers but I don't remember the numbers.

Q. Did you also know or understand that Handy-Andy, that is, the owners, Keith Anderson, was also one of the principal owners of the only Sylvania distributorship in **[2942]** California which sold to eleven counties in Central California? A. Where is that distributorship?

Q. In Fresno. A. In Fresno?

Q. Yes. A. Yes, I believe I did.

Q. Now, the fact that Keith Anderson not only controlled wholesale sales in eleven counties in Central California and also owned and controlled the retail dealer at Sacramento gave him a larger bargaining or a greater bargaining position with the manufacturer of Sylvania than perhaps this dealer up in Woodland who bought some ten or $12,000 of product in 1965; isn't that a fair statement? A. Bargaining position with respect to what, Mr. Miller?

Q. With respect, Professor Preston, to the enforcement, perhaps, of Sylvania's distribution policies. A. Well, he certainly would be an important customer. The reason I asked you with respect to what, Mr. Miller, I wanted to be certain that we are not getting into the price discrimination argument, which I presume we are not.

Q. Now, did you tell me, sir, you did not personally run a field study in Sacramento? A. I did not. I did tell you that I did not do it.

[2943] Q. All right. You did prepare some data which you attached in three or four tables to your prepared testimony, correct? A. Yes, to the notes concerning the testimony that I gave to Mr. Foster.

Q. Yes. Do you have a copy? A. I don't have it with me, but I believe there is one there on the table.

Q. Thank you. Would you turn to the table marked Table 3. See that, sir? A. Yes, I do.

Q. Now, what you have done here is listed, what do you have, ten or twelve cities in the United States? A. There are twelve of what are called standard metropolitan statistical areas. These are really county groups, they are groups of counties.

Q. And you listed Sacramento, California, among them? A. Yes.

Q. And then you show the number of color T.V. sales outlets for 1966, right? A. As given in the Dun & Bradstreet report which we believe to be an underestimate of the numbers.

Q. You show 49 outlets in Sacramento. A. Yes, that's correct.

[2944] Q. And this means, does it not, that 49 outlets carrying a variety of brands. A. One or many.

Q. You made no study to find out how many brands were carried? A. Oh, yes, the Dun & Bradstreet report shows that, Mr. Miller, but the comparison of Dun & Bradstreet data with the Sylvania, Sylvania's own data, showed that the Dun & Bradstreet data left out a lot of dealers and therefore I concluded that it didn't provide a good enough description to be more than indicative and that we couldn't really trust it for the number, frankly. In fact, there were about 120 what I call brand outlet exposures. That means brands exposed in an outlet. So the same brand in two outlets would count for two or one outlet with two brands would count for two; counting either way, there were 120 or so brand outlet exposures listed in the Dun & Bradstreet report.

Q. Well, Professor, there is no way that I can tell from looking at this table to see how many brands were carried at any of these outlets, is there? A. Not from this table, no.

Q. But you show some 49 outlets in Sacramento, California, in 1966, correct? A. That's correct.

[2945] Q. And then you show a number of Sylvania dealers, 1965, and you say there are five dealers in 1965. Where did you get that information? A. From someone in Mr. Traviston's office.

Q. Mr. Traviston gave you that? A. Yes, he did.

Q. Getting back to our chart, Exhibit FX, 1965, according again to interrogatories given to us under oath from Sylvania, shows Handy-Andy who pur-

chased almost a million dollars of product from Sylvania, the second dealer, J. W. Brewer, purchased $11,290 worth of product that year. The footnote on Brewer says, "Brewer purchased only one color T.V. set in 1965 and all purchases were sold outside of the City of Sacramento." The other dealer in 1965, according to the interrogatories under oath, was Tri-State Sales. Now, Tri-State purchased $327 worth of product for the year and the footnote 4 says, Tri-State purchased no color T.V. sets in 1965. Now, with the possible exception of Sherman and Clay, it appears that only Handy-Andy had color sets in Sacramento in 1965. Were you aware of that, sir? A. You mean sold color sets? I don't know what they had, do you?

Q. Well, more precisely, purchased color sets from Sylvania. **[2946]** A. Are these purchases or sales?

Q. These are purchases. A. Purchases by the dealers. All right. Then it's Handy-Andy and possibly Sherman-Clay, right.

Q. Right. So there aren't five, really two. A. No, they are two different things. We could have two different columns. The question I asked Mr. Treviston and his staff and the answer I got was the number of franchise dealers, outlets, franchise dealer outlets.

Q. All right. A. And they provided me with the number five.

Q. Who are they? A. Well, you have just shown three, apparently and the other one, there's one more than Sherman-Clay and I don't have the fifth name. I had a list of names, but I don't have it here.

Q. Let's look at this again. Now, the question was, did you realize that the second dealer, Brewer, purchased only one color set in 1965 and he didn't even sell it within the territory? A. No. No, I didn't know anything about it.

Q. Did you know that Tri-State Sales did not purchase one color set in 1965? A. No.

[2947] Q. And did you know that Handy-Andy purchased literally hundreds of color T.V. sets and spent almost a million dollars with the company, compared to the next largest dealer which was perhaps Sherman and Clay who had about $10,000 worth of product on the floor? Did you know those things? A. I knew that Handy-Andy was by far the largest dealer, yes.

Q. Did you know the actual sales or purchase figures? A. I saw them, but, you see, the specific number doesn't hit me too hard.

Q. Didn't make too much difference? A. No, but it was by far the largest dealer, I know that.

Q. Now, if you look at the bottom where we add up these columns on Table 3, of these twelve locations you have picked, it appears that there is a total of 652 television outlets in these various cities across the country, including Sacramento, right? A. According to the Dun & Bradstreet report.

Q. If you totalled up the total number of Sylvania dealers in each of those cities you get a hundred and eighty-two out of 652 outlets, correct? A. That is correct.

[2948] Q. Now, if my mathematics are correct, that is 27 percent. A. Yes.

Q. All right. So it is fair to say that in this study group of cities, whether or not that is truly representative, but in this study, 27 percent of the total outlets investigated carried the Sylvania brand; correct? A. Well, not really correct, Mr. Miller. I wish it were correct. It isn't your mistake and it isn't my mistake, it is that the two numbers come from two different sources and column three, the Dun & Bradstreet data is too small a number. We know that because we know that there are Sylvania dealers not enumerated in this Dun & Bradstreet report. We found that out by checking. If we presume there are other dealers not enumerated in the Dun & Bradstreet report, then we know that 652 is not the actual total number of T.V. set outlets in those cities.

Q. All right, disregarding that, based upon the figures shown in your table three, we are talking about 27 percent, aren't we? A. I won't talk about 27 percent, Mr. Miller, but I can tell you what the percentage is I would talk about.

Q. Well, just a moment, sir. I get 27 percent based upon the total number of Sylvania dealers and the total number of outlets in these selected cities. Would you **[2949]** agree with that or not? A. Your arithmetic is all right, but the comparison is not relevant. May I tell you what the comparative number is? We don't have to think it is right or not, but we do happen to know the number that would be the right, the appropriate one to use in this comparison.

Q. Are you through? A. Excuse me.

Q. Now, Professor, you have listed a number of cities here. We have Tampa, Florida, 46 outlets and

five Sylvania dealers. That means to me about 10 percent of the dealers in Tampa carry the brand. In Rochester you show about 25 percent of the dealers carrying Sylvania. In Columbus it works out to be about 17 percent. In Phoenix it is about 49 percent. In Providence it is about 57 percent of the dealer outlets carry the brand. In Dayton it is only 5 percent and in Louisville it is 19 percent. Hartford 17 percent, Ft. Worth 8 percent, Memphis 26 percent. Finally we get to Albany, 87 percent of the outlets studied in Albany carries Sylvania's brand. Now, in 1966, sir, did you know that there was only one dealer left in Sacramento? Not five, not four, but one? A. I will say it was either one or two, depending on whether Sherman and Clay discontinued, and I am not sure **[2950]** what the answer is.

Q. All right. Assuming, sir, for the purpose of this question, that there was indeed only one, would you work out for me the percentage of outlets that carried Sylvania's brand in Sacramento in 1966? A. If we assume there were 49 outlets?

Q. Yes, sir. A. It would be 2 percent.

Q. 2 percent, less than half of the lowest of all these test cities which was Dayton at 5 percent, correct? A. Mr. Miller, I am sorry——

Q. I am just asking you—— A. The numbers are just really not correct, you know. I really wish they were, but they are not. The numbers you are using are not correct.

Q. These numbers, sir, are coming from your table three, are they not, attached to your testimony?

A. But one cannot be correctly expressed as a percentage of the other, Mr. Miller.

Q. Are your numbers correct? A. They are correct in each column for what it says it is.

Q. Are you telling me that it is not correct to express the number of Sylvania dealers as a percent of the total outlets? **[2951]** A. Not from those two columns it is not correct to do so; that's why I didn't do it.

Q. Why is that, Professor? A. Because if you look at Page 17, Mr. Miller, you have the explanation here. The Dun & Bradstreet report—I am reading from my own report—shows Sylvania represented in eleven percent of all the surveyed dealerships in the 100 largest metropolitan areas. You see the comparison here in this sentence I just read, the 11 percent, is the nationwide average that is an appropriate figure if we want to make the percentage based upon the Dun & Bradstreet report, because that's taking the Sylvania representation in the Dun & Bradstreet report and the total representation in the Dun & Bradstreet report.

Q. All right, so we have 11 percent nationally, right? A. In the Dun & Bradstreet report.

Q. All right. That means on a national basis 11 percent of the outlets carried the Sylvania brand, correct? A. Yes.

Q. And yet in 1966 in Sylvania products, only 2 percent carried it in Sacramento, right? A. Yes, something like that.

Q. One or two out of 49. A. Yes.

[2952] Q. Now, if another dealer had been permitted to enter Sacramento in 1966 and assuming for this question that there was only one existing dealer up there at that time, that would have merely doubled Sylvania's penetration as a percentage of outlets carrying the brand; correct? A. Yes, that's correct.

Q. Would have gone from two to about four percent, correct? A. Yes, if it went from one to two on the basis of fifty.

Q. Compared to a national average of 11 percent, right? A. Yes, sir.

(Continued on the next page; nothing omitted.)

[2953] Q. Why did you use 1966 data for the number of total TV outlets and 1965 data for the number of Sylvania outlets? A. I used a 1966 data because that was the only year that Dun and Bradstreet's report covers. It is a single year report and that is the only year for which it is available. I use 1965 data for the Sylvania dealers because that was the year in which the matter under litigation arose and because the two sets of numbers are not directly comparable and I want to emphasize that.

Q. Professor, you also talked about competition at the manufacturing level, did you not, in your direct examination? A. Yes, sir.

Q. And I think you were giving us the idea that it was somehow necessary for Sylvania to use this restrictive distribution policy. Generally that is a fair statement of what you said? A. I presume that the executives of Sylvania thought it was a good idea or they wouldn't have done it, yes, sir.

Q. And further you kind of gave the idea that if Sylvania did not adopt this policy of distribution, that [2954] it would somehow affect Sylvania's ability to compete with its fellow manufacturers; isn't that what you were saying? A. Yes, I think that is a fair assumption since I suppose that is what the executives thought.

Q. And you said, I think, that Sylvania had about a four to five percent share of the market nationally? A. Yes.

Q. And you seemed to say that you thought for some reason that this restrictive policy that they had enabled them to maintain that share? A. I don't use the word "restricted" with respect to the policy. But I think the policy of distribution that they were promoting did serve to strengthen their competitive position nationwide.

Q. You are not trying to tell this jury, are you, Professor, that you thought that Sylvania was a very weak company, a company which was failing? A. No, certainly not.

Q. Certainly you didn't mean to give that impression, did you? A. Certainly not.

Q. You know that it is strong financially and was strong financially in 1965? A. I presume that is the case.

[2955] Q. And you didn't assume anything to the contrary, did you? A. No, sir.

Q. There could be other reasons, couldn't there, that Sylvania was able to maintain a 4 to 5 percent share of the market nationally besides the use of this

particular distribution policy? A. Oh, many other reasons, of course.

Q. In other words, quality of the product? A. Of course.

Q. That could be a reason. A. Yes.

Q. Promotion? A. Yes.

Q. Advertising? A. Yes.

Q. They may just have a better product than some of their competitors. A. Judging by the market share this is not widely enough known. You didn't hear apparently that Sylvania is the Cadillac of the industry. Well, I bought one, as I told you before I ever had any connection with the firm and I am quite satisfied.

Q. So you are not saying that it necessarily [2956] follows that these particular distributions policies were or are necessary in order that Sylvania be able to maintain its present market share, are you? A. No, I certainly am not.

Q. There is no way to tell, is there? A. I suppose given enough imagination and spending enough money we might conduct some kind of research to satisfy ourselves on it, but I don't think we would be able to.

Q. You certainly didn't attempt anything like that. A. I did not. I do think that every firm responsible to its own competitive situation has to be considered as its best attempt at enterprise competition, as we were discussing earlier, and that we are hasty to say that relatively well planned, sensible firms obviously in a competitive position with others in the market

do bizarre things without reasons. I think we should rather think that their behavior is motivated toward improving their competitive position and we can look at the data and see whether it does.

Q. There is really no way you can tell from the competitive effect at a retail level—you can't tell from that type of information what the competitive effect at the [2957] manufacturing level is going to be, can you? A. They are not the same thing. I agree with that, that they are not the same.

Q. And there doesn't seem any direct correlation between the two? A. Of course, if a firm, as I say, was pricing its product way out of competitive limits at the retail level, then it would show a decline in marketing shares at the manufacturing level.

Q. Didn't you say in this article, starting at page 508 in Duke Law Review:

> "A closely related matter is the interaction between horizontal and vertical market relationships. The present state of economic analysis doesn't in general permit us to specify the impact of changes of one of several vertically related market levels upon structure and behavior at another."

A. Yes, you are quoting from my own writing.

Q. Right, and that was true at the time you wrote this article? A. Yes.

Q. And it is still true? A. I have been working on that since then and have written more about it. I think I have a few more ideas but they don't answer the questions yet.

[2958] Q. Basically that is still true? A. Yes, I think that is right.

Q. Lastly, Professor, it seemed to me that you were telling all of us that in terms of competition it didn't really matter if you squeezed out the little retail dealer in Sacramento because the number of dealers doesn't really correlate directly to competition at that level, but that you can't squeeze out a manufacturer because if you squeeze out a manufacturer that is anti-competitive. Is that what you were trying to tell us? A. It is not a question of whether it is a dealer or manfacturer. The change from 100 manufacturers to 99 manufacturers in an area doesn't change the competition either. It is a question of numbers.

Q. How about the change from two Sylvania dealers in a given market area to one? A. It depends on whether you think there is a market for television sets or a market for Sylvania television sets. If there is a market for television sets with 50 dealers in it, which is the way we have been describing this market, a change of one, you really would have to make some very special assumptions to get any kind of result that a change of one was going to alter competitive conditions or price levels or volume, or anything else in the market.

[2959] Q. Do you recall the assumptions I asked you to make about the unprecedented demand for color products in 1965 and '66? A. Yes, Mr. Miller.

Q. I wish you would make those assumptions for the purpose of this question and let me ask you where there is a shortage of color television sets obtainable

by retail dealers, such as I have asked you to assume, would not that mean that there would also be a shortage of choices at the consumer level between prices, for instance? A. Not necessarily a shortage of choices. I would expect all prices to go up.

Q. And would it not follow that if an additional dealer entered with additional products under marketing conditions such as those, that this would increase the competition pricewise? A. Not necessarily, Mr. Miller. We could have a lot of competition but it is based on scarcity and higher cost and higher prices and we could still have a lot of competition.

Q. If you add product by adding another dealer in a market period of scarcity of products, are you telling us that you want this jury to believe there would be no change in the competitive impact at the retail level? [2960] A. Mr. Miller, to argue that you have to argue that there has been a decline in competition in the market from which the man took the sets, and I do not believe that.

Q. So your answer is no, sir, it would make no difference to competition. A. My answer is no, sir in the quantities that we are talking about. We haven't mentioned any quantity, but if we are talking about doubling the market quantity, maybe yes. But then that means emptying the market quantity somewhere else. That means emptying another market. This situation that we assumed in terms of scarcity and increasing demand was market-wide, nationwide, so if there is a scarcity all over the country and we shift sets from one place to another and if the market

in the various areas were equally competitive to begin with, if there is any proper competitive market where the product goes, then there must be an anti-competitive effect where the product left. If we are talking about 1 percent, 2 percent, 3 percent of the quantity sold in various market areas, I just find that preposterous.

Q. In 1965 how many color units would you find to have been sold in Sacramento, for instance? A. Do I have that data here? Excuse me. If I have it I will know. [2961] Estimated color television sales in 1965, total units—this is all brands—16,788.

Q. Look to Table 3, please. A. I am sorry, this is Table 3, Column 5.

Q. You show that Sylvania's estimated share in Sacramento was 12.6 percent of the market? A. Yes.

Q. And do you show the total number of units sold in Sacramento? A. Not by Sylvania.

Q. Total number of brands? A. 16,000.

Q. Take 12.6 percent of that figure and that would give you in units the number of Sylvania units sold in that market, right? A. Yes, I think so.

Q. My mathematics show about 2,112. A. That would be about right.

Q. Getting back to your discussion about the impact of bringing new products in during that unprecedented shortage period, the dealer was able to enter a market with 2,000 sets for that year. That is doubling the product available to the consumer. Wouldn't that have an impact on competition pricewise? [2962] A. Well, would it?

Q. I am asking you, sir. A. If he came in at a lower price I think it would. If he came in at the same price then it wouldn't.

Q. Would not other dealers have some pressure to compete with that new dealer with volumes of product? A. They might, although we must relate the 2,000 that you assume coming into the market to what you might call 17,000 sets in the total market, not just Sylvania sets.

Q. Didn't you say in fact a market is not competitive when the range of choice is unnecessarily narrow or whether their ability to shift among sellers is restrained by artificial barriers? A. Yes.

Q. And wouldn't you say that there would be some effect in the context of what you are saying in that statement, some effect where there is an unprecedented shortage of product. A. Some effect, on what, Mr. Miller?

Q. On the customer's ability to make choices. A. Well, all the brands are already there. We haven't added a new brand, have we? The brand was already there. This 2,000 is not 2,000 of a new brand. It is 2,000 **[2963]** of a brand that is already in the market.

Q. Yes. A. The guess is whether the 2,000 additional sets are brought in at a price lower than the price that was prevailing in the market before. In this period of intense demand and shortage that you have described, I would be very surprised if anybody brought in the additional sets and cut the price.

Q. In 1966 in Sacramento what pressure was there on Handy-Andy to sell at a low price? A. The pressure of the other 48 outlets.

Q. The other 48 didn't handle Sylvania products, did they? A. No, but they handled many products.

Q. If a dealer moved into his territory in 1966 with Sylvania products in the quantity that he had then, would that not possibly create some price competition? A. Well, it would depend on whether the situation you described is as you described it or not.

Q. You certainly can't tell us under oath, Professor, that it wouldn't create that type of competition? A. I wouldn't say that it wouldn't. I wouldn't say that it would.

Q. You don't know? **[2964]** A. In the situation you have described, no.

Q. As a matter of fact, you don't know at this point, do you, based upon the information you have? A. No, sir.

Redirect Examination

By Mr. Popofsky:

Q. If one added one fact to my brother's hypothesis, namely, that the dealer coming in—and only hypothecating—as a custom charged $50 to $100 above the normal retail level or suggested retail levels, would that affect your opinion? A. Then I wouldn't think he would come in as a price-cutter.

Q. This chart which you have been shown, the dealer franchise structure in 1961, was based on interrogatories prepared in our office and Mr. Treviston's office? A. It related to Sacramento County.

Q. Your table says, "Metropolitan Statistical Areas, Sacramento, California, Five." A. Yes.

Q. Do you know if this table which is limited to Sacramento County corresponds with the table which

is referred to as the metropolitan area? [2965] A. No, it doesn't. We should have made that point. I am sorry. I guess we never did quite make the point about what these listed items were anyway in my table.

Q. Show us that [sic] that lists in Sacramento. A. I did say it is a standard metropolitan statistical area. This is a United States Government concept for measuring the size of metropolitan areas. It is based on counties and most of these areas involve more than one county. The Sacramento standard metropolitan statistical area involves three counties, which are Sacramento, Yolo County and the County above Sacramento—it is on the tip of my tongue—Placer County. So my table refers to the Sacramento metropolitan area, the three county area of which Sacramento is the center and by far the largest.

Q. This particular exhibit which I show you, which is in evidence but unmarked, shows—this is 1965—that Sylvania franchised dealer locations in Northern California, shows three dealers in Sacramento, one in Woodland and one in Roseville and one in Auburn. My question is: You could ascertain from this if the number five that appears in your table corresponds with this? A. Yes, there are five red dots in the three counties.

[2966] Q. And the information you got was from Mr. Treviston's office? A. Yes.

Q. And that was number five? A. Yes.

Q. While counsel is drawing your attention to this statement number three, this is a table showing the

information you got from Dun & Bradstreet's report and it also shows the number of Sylvania dealers in '65, among other things. A. Yes.

Q. Counsel drew your attention specifically to Albany. A. Albany, New York.

Q. Which on his allocation shows 87 percent of the T.V. dealers in Albany carrying the Sylvania brand. That is the way he did it. A. That is correct. I don't believe that is in fact correct but that was the number we were working with.

Q. Let's take counsel's number as correct. What was Sylvania's market share being represented in 87 percent, let us assume of— A. 5.7 percent market share.

Q. 5.7 percent market share with 87 percent representation on that assumption? [2967] A. Yes.

Q. As you go down this table could you just scan the market shares of Sylvania to these cities which are roughly the comparable size of Sacramento and tell us what they show? A. Well, they vary. The lowest figure is 1.5 percent share of sales in Dayton, Ohio, and the highest is the 12.6 percent in Sacramento.

The striking thing is that the number of dealers in Dayton is three, the number in the Sacramento metropolitan area, as we just defined it, is five.

So that the numbers of dealers in the two areas are very close to the same, very similar, three and five, and the total retail sales, all retail sales in the two areas are very close together, one point three billion in each case.

Yet the market shares are at opposite extremes which is just one piece of evidence of which I have observed so many pieces of evidence in this data that the exposure in terms of dealers doesn't seem to have any close association with the market shares in the various metropolitan areas in the television set industry.

In Sylvania's case, and that does suggest the importance of the other aspects of dealer behavior, that is the dealers that are advertising and aggressive and have good **[2967-A]** displays, and so forth, I presume —or whatever other characteristics there are—make sales and the dealers in Sacramento with the 12 percent share suggest very aggressive and successful competitive selling, whereas in other areas where Sylvania has many dealers, it doesn't have a large share.

That suggests that the dealers are simply not very aggressive competitors, not as aggressive as I am sure Sylvania would like them.

(Continued on the next page; nothing omitted.)

[2968] Q. Sir, throughout your cross-examination by Mr. Miller, he described the assumptions that you were given and talked about restrictive distribution practices of Sylvania and what have you. Just so everyone understands what you were asked with respect to the locations practices, would you please once again for us state what we asked you to assume was the policy with respect to franchises by location. A. It was my understanding that the assumed circumstances were that the manufacturer franchised the dealer to operate at a specific location and to carry

stock and so forth at that location, but that he could sell to anyone he chose at any place by any method that he so desired, that his market outreach was restricted only by the facts of distance, the cost of communication and doing business over a large business, [sic] not by any further restrictions on his ability to deal with anybody who might come along. That is my understanding.

Q. And that was the assumption we asked you to render an opinion based on? A. Yes.

Q. Now, counsel did cross-examine you, quite eloquently I might state, for two and a half hours. Did he draw to your attention, sir, any fact or any **[2969]** statement in your writing or any other circumstance which causes you now to alter the opinion you first voiced at that time? A. No, he did not.

Q. One last question. There was a series of questions concerning coercive power. Is a manufacturer the same sense of coercive power, as counsel has used it, exercising such power when it seeks legal—institutes legal proceedings to collect money allegedly due and owing for sets that have not been called [sic] for? A. I wouldn't say so.

Q. You wouldn't call that coercive power? A. No, I wouldn't.

* * *

Recross Examination

By Mr. Miller:

Q. As I understand your testimony, the number of outlets carrying Sylvania's brand in any given area does not directly affect Sylvania's market share in

that area, is that correct? A. That is an empirical observation based on the data I have. That statement is true.

[2970] Q. So that from your data on table 3 if, assuming there were five dealers in Sacramento in 1965, if we added five more there is no reason for you to believe from this empirical data that the market share of sales would have slipped under 12.6 percent as shown? A. I don't know whether it would have gone up or down.

Q. Lastly, he used the term market outreach. You mean by that sort of the radius of action that the dealer can hope to achieve from a given location? A. Yes.

Q. Do you know in miles what that radius was in Northern California for the average T.V. dealer in 1965? A. No, I don't.

* * *

Testimony of Thomas D. Rivers

[2985] Q. All right, sir. You mentioned the Maguire type of flooring. What was the relationship between the national credit office and Maguire? A. Well, when the Maguire program was first put into effect, the controller, Mr. Lockard, and Mr. Callahan, who was then national credit manager—retail, and myself were involved in setting up a program with Maguire on a contractual basis where the John P. Maguire Company, a highly respected, old-line factoring company, would perform certain services for Sylvania for fee. So our relationship was one of getting

a service from a company that was capable of giving us service and paying for it.

Q. In that relationship with Maguire, who actually extended the credit? A. Sylvania extended the credit in each and every case. The John P. Maguire Company performed the services and I can list a few of them, if you would like.

Q. Just briefly, please. A. They had access to the computer, they performed field audits, that is, floor checks, they had men in the field to verify the inventory by model, serial number, they **[2986]** collected money, and they also created various legal documents and made sure they were properly filed with the various secretaries of state throughout the country, and they also issued trust receipts as the end result of our invoice.

Q. Who was the secured party in the trust receipt, to your knowledge? A. The secured party was John P. Maguire Company, yes.

Q. Are you familiar with the terms of the Maguire flooring plan as understood by the national credit office of Sylvania in 1965? A. Yes.

Q. Could you briefly outline the terms of the plan? A. Their standard program was to give all dealers four months free floor plan, that is, the first four months there was no charge to the dealer. They also, at the end of four months, they would give the dealer an option, he could either pay it off in total at that time and, of course, if he did that, then he would never have an interest charge or service charge, or he could extend his floor plan for two 30-day periods by remitting to the John P. Maguire Company a service

charge for each of those 30-day periods. If at the end of the six-month period, which is the four months plus the two one-month extensions, all bets were off. He was supposed to pay for them, they were due in [2987] full and that was the end of it.

Q. Was it due in full immediately as a matter of practice? A. That is right, there was a note and the note was due and must be paid for.

Q. As a practical matter was any grace period given? A. Yes, we gave a five-day grace period, and this is a practical thing, because of the mails, you know, system, the distance from them, a remote dealer, and the city, holidays, and so forth.

* * *

Testimony of Lee Lockhart

[3160] * * * Q. You're comptroller of the home entertainment division? A. Yes.

Q. All right, sir. A. I told Mr. Rivers that when I returned from Puerto Rico I would determine what steps should be taken to protect Sylvania's interest in a series of receivables that seemed to be in trouble.

Q. Why, sir, did you place the credit hold? A. There were several reasons. The agreements which had been reached on a friendly basis in June were not being observed by Continental TV. The aging of the account was trending downhill in a hurry.

I also had been advised that Mr. Shahood had taken on a major order of Philco products, and that he was taking on a capital loan in the amount of another $40 or $50,000—I'm not sure which, and that the interest

on that [3161] loan would be forgiven if he bought a million dollars worth of products by the end of the calendar year 1965. I also had the information regarding the record of convictions against Mr. Shahood as reported in D and B.

Our exposure was significant at that time, and I acted as I believed a prudent credit man should: Stop, take a look and see what the facts are and decide what you have to do beyond that.

Q. And you went off to Puerto Rico. This wasn't to the Philco show, I take it? A. No, it wasn't.

Q. How long were you in Puerto Rico? A. I believe I returned Saturday of that week.

Q. What did you do next with connection with the Continental TV account? A. I debated with myself. I'm sure I had discussions with Rivers and Callahan, and by the 16th of September I decided what I had to do.

Q. What decision did you make, sir? A. I decided to reduce the amount of credit guide limit to Continental to $50,000.

Q. Why did you make that decision, sir? A. Because the exposure was getting out of hand. The exposure was getting out of hand. It was trending over to more and more matured and sold and unpaid that [3162] weren't being reported promptly. Mr. Shahood had not lived up to the agreement which had been reached in June at the June show, and it was time to cut it back and resolve the differences that existed and see if it didn't rebuild at some point and time when we would have a little more faith in it.

Q. All right, sir. What did you personally do in connection with the credit cut? A. I wrote a letter to Mr. Pedlow outlining a revocation of the June 22, letter—June 21 letter as it affected the timing of payment. In effect, I withdrew the figure concession I had granted in June. I told Mr. Pedlow that he wanted to get his records straightened out with regard to the 60 color television sets which had not yet been adjusted on the Maguire plan.

* * *

[3255] * * * Now, you recall there was a meeting held the night after the repossession? A. Yes.

Q. And this was held in Burlingame? A. Yes, sir.

Q. And it was at the Hyatt House? A. Yes, sir.

Q. All right. And by and large, all the gentlemen that helped to conduct that repossession gathered together, and you and Mr. Pedlow in substance conducted the meeting, correct? A. That's right, sir.

Q. And you told the people of this meeting to remember, did you not, that this was a Maguire action and not a Sylvania action? A. That's right, sir.

Q. And then in substance, each of those gentlemen reviewed the day's activities? A. That's correct.

* * *

COUNSEL'S JURY ARGUMENTS

[3338] Ladies and gentlemen, there are also types of antitrust cases, which this is, which are so pernicious, the policies are so pernicious to competition, so anti-competitive in their impact on our economy that

the law states there is no possible way to justify them. And, ladies and gentlemen, the two restrictions involved in this case are such marketing, distribution restrictions: Territorial restrictions and price maintenance restrictions are what lawyers and courts call per se violations of the act if they are enforced by contract, combination or conspiracy.

So despite what Mr. Popofsky told you in his opening argument, despite what Prof. Preston testified to on the stand, the facts are that it is only necessary in this case to find, number one, that Sylvania had a policy by which it restricted the territory in which and/or customers to which Continental could sell Sylvania products after it had purchased them from Sylvania.

* * *

[3378] * * * You will not be asked, as counsel pointed out, to make any decision about the reasonableness of the distribution practice or whether or not competition is or is not being bettered or furthered.

You will be asked only to decide what is the true character of the Sylvania practice. Was it the character that Continental suggests? Did it really involve price-fixing on the one hand and control over territories on the other, or did it, as we suggest, involve no more than a franchise by location practice?

If it is the latter we contend the instructions make it lawful. So you will be asked only to identify the character of the practice. In making that identification I think you should understand it is true that the antitrust laws are designed to further competition at

all levels—manufacturers, retail, intra-brand, inter-brand.

But it is also true that the law understands that if you franchise a dealer in San Francisco and a dealer in Sacramento, and do nothing else, that the manufacturer acting alone is not going to be in terribly much competition between the two because of distances. The same is true between Chicago and Miami, Houston and Dallas.

* * *

INSTRUCTIONS GIVEN THE JURY

[3434] * * * In this action, Continental asserts two claims: (1) that Sylvania and/or Maguire have violated Section 1 of the Sherman antitrust law; (2) that Sylvania and/or Maguire have wilfully and maliciously injured Continental's business in violation of California law.

I will first speak with respect to Continental's claim under the antitrust laws.

Continental asserts that Sylvania and/or Maguire have violated Section 1 of the Sherman antitrust law which provides as follows:

> "Every contract, combination . . . or conspiracy in restraint of trade or commerce . . . is . . . unlawful."

[3435] Continental's claim for damages which they claim they suffered as a result of the alleged violation of the antitrust law is based on Section 4 of the Clayton Act which provides that:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . ."

The parties to this action have agreed that "trade or commerce", as defined by the antitrust laws, is involved in or affected by the acts of the parties and therefore, you need not decide that issue.

Continental's specific claim under the Sherman antitrust law is that Sylvania entered into a contract, combination or conspiracy with Sylvania dealers, including Handy Andy, Continental itself, and/or with Maguire, the purpose and effect of which was to establish and enforce a sales distribution policy restricting the locations from which and territories in which Sylvania dealers could resell Sylvania merchandise which the dealers had purchased from Sylvania; it also claims that an integral part of that distribution policy was to maintain and enforce the minimum resale prices suggested by Sylvania, and it further claims that a purpose was to prevent Continental from selling such merchandise from a location in Sacramento.

[3436] Continental further alleges that as a direct and proximate result of such contract, combination or conspiracy, Continental's orders for merchandise were not filled by Sylvania, that its Sylvania franchise was terminated, and Continental was thereby unable to obtain large quantities of color T.V. sets for resale. Continental asserts that as a consequence of this action, it suffered substantial damages in the form of

lost profits which could have been realized by it, had the defendants not engaged in the alleged illegal conduct.

Sylvania and Maguire deny that there has been any contract, combination or conspiracy or any unreasonable restraint of trade in violation of the Sherman antitrust law. They further contend that whether or not the Sacramento situation involved Sherman antitrust law violations as alleged by Continental, Sylvania's refusal to continue to supply merchandise to Continental was not motivated or caused by any claimed territorial restrictions on Continental; but rather, by other factors including good faith credit decisions and the alleged refusal by Continental to pay for merchandise received.

The first issue you should consider in passing upon the antitrust claim alleged by Continental is whether a contract, combination or conspiracy existed under the instructions I will give to you, which will also include **[3437]** directions as to when, under the antitrust laws, a contract, combination or conspiracy is deemed to be an unlawful restraint of trade in violation of the antitrust laws.

When in the course of these instructions, the word "person" is used, you should take that word as referring to any person or corporation, and then the word "conspiracy" is used, you should take that word as referring to a contract, combination or conspiracy.

The antitrust laws which prohibit a contract, combination or conspiracy in restraint of trade are not

directed at individual action. These words generally refer to a single concept, the essence of which is concerted action or conduct by two or more persons who attempt by concerted action to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means.

A contract, as these words are here used, simply means an agreement, express or implied, between two or more persons. A conspiracy is likened to a partnership, in which each member becomes the agent of every other member.

The existence of similar conduct among various persons, or the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Similarity of conduct does not prove a conspiracy unless there are **[3438]** circumstances which logically suggest joint agreement as distinguished from individual action. That is to say, similarity of conduct is evidence which, with other evidence, may support a finding of conspiracy. But standing alone, similarity of conduct is not enough.

However, the evidence need not show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What a preponder-

ance of the evidence in this case must show, in order to establish proof that a conspiracy existed, is that the alleged members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

Nor need the evidence show that all of the means or methods claimed by Continental to carry out the alleged conspiracy were agreed upon; nor that all means or methods which were agreed upon were actually used or put into operation; nor that all persons alleged to have been members of the claimed conspiracy were such. What a preponderance of the evidence must show is that the alleged conspiracy was knowingly formed; that one or more of the means or methods **[3439]** alleged by Continental were agreed upon to be used in an effort to accomplish some object or purpose of the conspiracy which is alleged; and that two or more persons, including Sylvania and/or Maguire, were knowingly members of the alleged conspiracy.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but who happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before you the jury may find that Sylvania, Maguire, Handy Andy, or any other person, has become a member of a conspiracy, a preponderance of the

evidence in this case must show that the conspiracy was knowingly formed, and that Sylvania, its dealers, Maguire, Handy Andy or any other person who is claimed to have been a member, knowingly participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate knowingly means to act or participate voluntarily and intentionally, and not because of mistake, or accident, or other innocent reason. So, if a person with an understanding of the unlawful character of a plan, intentionally encourages, advises, or assists, for the purpose of furthering the undertaking or scheme, he **[3440]** thereby becomes a knowing participant—a conspirator.

One who knowingly joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether or not Sylvania, or Maguire, or Handy Andy, or any other person, was a member of a conspiracy, you the jury are not to consider evidence of what others may have said or done. That is to say, the membership of a defendant, or any other person, in a conspiracy must be established by evidence in this case as to his own conduct, by what he himself knowingly did or said.

However, if you should find from a preponderance of the evidence that a conspiracy existed, and that Sylvania or Maguire or any other dealer was a member of it, then the statements thereafter knowingly

made, and the acts thereafter knowingly done, by any person likewise found to be a member of the conspiracy, may be considered by you as evidence against each defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant or defendants; and provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or statement made or act done outside the court, by one person, may not be considered **[3441]** as evidence in this case against any person who was not present and heard the statement made, or saw the act done.

In your consideration of the evidence in this case as to the conspiracy charged by Continental, you should first determine whether or not the conspiracy existed as alleged.

If you conclude that the conspiracy did exist, you should determine whether or not Sylvania or Maguire or any other person alleged to be a member were knowing members of the conspiracy.

If it appears from a preponderance of the evidence in this case that the conspiracy alleged by Continental was knowingly formed, and that the defendants, or one or more of them, knowingly became members of the conspiracy, either at the inception or beginning of the plan or scheme or afterwards, then

the success or failure of the conspiracy to accomplish the common object or purpose is immaterial.

You will recall that I previously instructed you that you should first determine whether in fact a contract, combination or conspiracy existed. Also as I previously instructed you, before a contract, combination or conspiracy becomes unlawful under the antitrust laws, it must be in restraint of trade.

The purpose of the Sherman Act is to preserve and **[3442]** advance our system of free, competitive enterprise; to encourage, to the fullest extent practicable, free and open competition in the market place. The antitrust laws are intended both to protect and advance competition in the manufacturing of goods, and also in the sale and resale of those goods. This includes the aim of achieving competition among dealers at the retail level, including competition among dealers in a single brand, and among dealers in different brands.

So, any unreasonable interference, by contract, or combination or conspiracy with the ordinary, usual and freely competitive pricing or distribution system of the open market in interstate trade or commerce, constitutes an unreasonable restraint of trade, and is a violation of the Sherman antitrust laws. We say, therefore, that concerted action or conduct violates the antitrust laws when its purpose is, or likely effect will be, to unreasonably restrain competition in the market place.

In an antitrust case such as this, the test of reasonableness of a restriction does not turn merely on

whether Sylvania had a sound business reason or motive to adopt a restrictive distribution system. A restrictive arrangement can be unreasonable even if injury to competition is not the motive which leads to its adoption. Also, a distribution system may be unreasonable under the antitrust **[3443]** laws even though, from the viewpoint of the manufacturer using the system, it appears to be a good business practice.

Even in the absence of predatory motives, and assuming the existence of business purposes such as the incentive for profit or volume considerations, a distribution system is unreasonable under the antitrust laws if the effect of the system on competition in the market place is substantially adverse. That is to say, the promotion of self-interest alone does not make the restrictive conduct by a manufacturer reasonable under the antitrust laws. It is only if such conduct is not unlawful in its impact in the market place or if the self-interest of the manufacturer coincides with the concern of the antitrust laws for the preservation and promotion of competition that it can be viewed as reasonable.

However, a contract, combination or conspiracy, to establish and enforce a sales distribution policy restricting the locations from and territories in which Sylvania dealers may resell Sylvania merchandise purchased by them from Sylvania, and where an integral part of that distribution policy is to fix, maintain and enforce resale prices suggested by Sylvania and to prevent Sylvania dealers from selling the products below the suggested price, would be unlawful even if that policy were adopted without any motive to injure and in order to gain reasonable **[3444]** profits or a desired volume of sales. That is to say, concerted action of the type just described is among those restrictions which are violations of the antitrust laws whenever found. Whether the prices agreed to be fixed were or are reasonable or unreasonable is immaterial. Any such effort taken by a manufacturer pursuant to a contract, combination or conspiracy constitutes an unreasonable restraint of trade and is a violation of the Sherman antitrust law.

Therefore, if you find by a preponderance of the evidence that Sylvania, acting in concert with any one or more of its dealers or any other alleged co-conspirator, that is to say, by means of agreement, combination or conspiracy, attempted to or did establish and enforce a sales distribution policy restricting the locations from and territories in which Continental could resell products purchased from Sylvania, and as an integral part of that distribution policy, fixed, maintained and enforced resale prices on such merchandise which it had sold to Continental in order to prevent Continental from selling below the minimum prices suggested by Sylvania, then you should find that Sylvania violated Section 1 of the Sherman Antitrust law.

On the other hand, if you find by a preponderance of the evidence that Sylvania did not engage in a contract, combination or conspiracy to establish and enforce a sales **[3445]** distribution policy which re-

stricted the locations from or territories in which Continental could resell the merchandise which it had purchased from Sylvania, and did not fix or maintain and enforce the resale price on such merchandise, but rather, merely suggested a minimum resale price for its merchandise to its dealers, and took no further action to secure the dealer's compliance with the suggested minimum price other than announcement of its policy and a simple refusal to deal, you should find that Sylvania did not violate Section 1 of the Sherman antitrust laws. That is to say, Sylvania has the right, acting alone and independently for its own business purposes and interests, to franchise certain locations and to "suggest" to its dealers the minimum resale price at which Sylvania would like to have the dealer resell the products purchased from Sylvania. And it is lawful for a manufacturer, acting alone and independently and not pursuant to a conspiracy or combination with others, to stop dealing with or selling merchandise to a dealer who does not follow the manufacturer's suggested retail prices. If the dealer, acting alone and independently, without agreement with the manufacturer and without any other combination and without coercion, chooses independently to follow the location practice and independently follows the minimum resale price as suggested by the manufacturer, there would be no violation of the Sherman antitrust law.

[3446] However, a manufacturer may not enter into an agreement, combination or conspiracy with its dealers or with others to establish and enforce

a distribution policy for its products which would restrict the dealer's freedom upon resale of the products to a particular location and a particular price fixed by the manufacturer. That is to say, an agreement, combination or conspiracy entered into by a manufacturer, with the objective of restricting the dealer's freedom upon resale to a certain location or locations and maintaining or fixing the resale price of its products purchased from it by the dealer, and which is to be enforced through intimation or threats from the manufacturer that he will cancel the franchise and refuse to supply, or refuse to continue to supply his products to the dealers as a means of coercing the dealer to adhere to the location restrictions and the prices set by the manufacturer, is a violation of the antitrust laws.

So too, concerted action in the form of dividing territories in which a dealer may resell merchandise purchased from the manufacturer without resale price maintenance constitutes a violation of the antitrust laws. That is to say, where a manufacturer, by means of a contract, combination or conspiracy, restricts the territories within which a dealer may resell merchandise purchased from the manufacturer, such a restriction is unlawful regardless of **[3447]** whether or not that restriction is good business practice from the manufacturer's point of view and is likely to assure adequate volume or profits. Any agreement, combination or conspiracy by which a manufacturer interferes with the ordinary and usual forces of competition to restrict the territories within

which dealers may resell merchandise which they have purchased from the manufacturer or to keep one dealer from competing for customers or sales in a territory or area served by another dealer also constitutes a violation of the antitrust laws, whether or not the territories resulting seem reasonable or unreasonable.

Therefore, if you find by a preponderance of the evidence that Sylvania entered into a contract, combination or conspiracy with one or more of its dealers pursuant to which Sylvania exercised dominion or control over the products sold to the dealer, after having parted with title and risk to the products, you must find any effort thereafter to restrict outlets or store locations from which its dealers resold the merchandise which they had purchased from Sylvania to be a violation of Section 1 of the Sherman Act, regardless of the reasonableness of the location restrictions.

On the other hand, on this question of territorial or customer restrictions, you are instructed that a manufacturer, such as Sylvania, has a right, acting alone **[3448]** and independently for its own business interests, to select its customers, and for this purpose, the manufacturer may grant an exclusive "franchise" to certain dealers to whom, alone, he will sell his products. Also, it is lawful for the manufacturer to designate the location or locations of the place or places of business for which said dealer or dealers are franchised. It is also lawful for the manufacturer to decline or refuse to grant a dealer's request for a franchise at different or additional locations.

If the manufacturer's restriction stops at that point, that is to say, the manufacturer confines his own sales of the merchandise to selected dealers, and if the manufacturer's decision to so confine his sales was arrived at acting alone and independently for his own business purposes, and if competitive products are readily available in the market, the restriction, on these facts alone, would not be a violation of the antitrust laws.

In accordance with my previous instructions, in order to prove the essential elements of Continental's claim, the burden is on Continental to establish by a preponderance of the evidence, the following facts: First, that Sylvania or Sylvania and Maguire have violated the antitrust laws in one or more of the particulars as to which I have previously instructed you; and second, that **[3449]** Sylvania or Sylvania and Maguire's violations have been a proximate cause of some injury and consequent damage sustained by Continental in its business or property.

* * *

ARGUMENT ON POST-TRIAL MOTIONS

[3511] * * * Mr. Popofsky: Limiting to that point, Your Honor, first of all I would say their proposed findings are not in accordance with your instructions.

Secondly, there is no fact record which would sustain a threatened injury today.

The Court: You think it's—

Mr. Popofsky: We did it to them. They were cut off. They were cut off four years ago for some reason.

The Court: The testimony is that your program continues elbow room.

Mr. Popofsky: The testimony is that an announcement of elbow room is policy. The jury didn't, but that continues in Northern California today. I would say there is no case.

The Court: Don't you think the jury found that under their findings, they said there was conspiracy on that?

Mr. Popofsky: That's correct. For the years as to which the jury was given evidence of injury to this party in 1964 and 1965.

The Court: But the witnesses testified they continued as of now.

Mr. Popofsky: No, the witnesses said they understood that unilateral policy to continue today.

The Court: Well, of course that was the way they tagged it originally.

[3512] Mr. Popofsky: But there was evidence, for example in the manual that was presented as to '64 and '65. There is no evidence that manual is used today. All we know about today is that they say we try to follow something called elbow room.

The Court: There wasn't anything that the manual has been abandoned.

Mr. Popofsky: It wasn't pertinent to the trial.

The Court: There wasn't; was there?

* * *

[3572] * * * The Court: What's different about it?

Mr. Popofsky: What's different about it? I think what's different about it is that it's, despite your Honor's indications to the contrary, where a per se rule has been applied to a locations practice.

The Court: Oh, thank you.

Mr. Popofsky: I said that now and I smile when I say that because it's the essence part of our argument and Your Honor doesn't share that belief.

The Court: I sure don't.

Mr. Popofsky: I understand that.

The Court: I think if a boy that was in law school and represented Sylvania—

Mr. Popofsky: Pardon?

The Court: I say a law student, if he had represented Sylvania back during the times when Schwinn came down, would have said, "Look, Mr. Sylvania, you'd better watch out," and evidently they didn't have counsel back there then and they didn't pay any attention. They possibly didn't even know about it in Schwinn. But then along with all of the dissent decrees that the Department of Justice was entering along that time and then the Ripkin [sic] speech and things like that and just the **[3573]** general understanding in the antitrust bar would have led to that.

Mr. Popofsky: I think the general understanding, just to speak ex cathedrally, was that limits entering territories were a real danger.

The Court: No, did you know that was in his opinion?

Mr. Popofsky: Judge Perry's?

The Court: Judge Perry's opinion.

Mr. Popofsky: Well, we wrote a letter about that. Judge Perry clearly indicates that he draws a line between—

The Court: He said natural or orally, either one. Of course if you're going to let people out on the unilateral idea, why, you might as well strike the theory off the books.

* * *

[3575] * * * Mr. Popofsky: I think the jury found that one of the reasons which prompted Sylvania to terminate this dealer was a desire by Sylvania to enforce what the jury found to be an agreement concerning locations. But that was not the sole or even necessarily the primary reason as witnessed jury's findings.

The Court: Well, they put on the testimony.

Mr. Popofsky: Pardon?

The Court: The testimony was there. It was not a practical arrangement. You kept on pounding on the idea that you could say anything you wanted to in rebuttal. It came in any time.

Mr. Popofsky: That's right. The evidence was undisputed about that, but we also conceded you can't sell television sets in any great volume outside of 25 miles.

The Court: Anybody has a right to buy when they have to come 50 miles to get their repairs, so implicit in the finding of the jury, I would say would be that there wasn't any doubt but what it was impractical for Continental for people to make sales to people 50 miles away.

* * *

VERDICT, JUDGMENT AND NOTICE OF APPEAL
(Citations Are To Clerk's Transcript (CT))

[1304] In the United States District Court
for the Northern District of California

Civil No. 44251-TCC

John P. Maguire & Co., Inc., a corporation,
Plaintiff,

vs.

Continental T.V., Inc., a corporation, et al.,
Defendants.

Continental T.V., Inc., a corporation, et al.,
Cross-Claimants,

vs.

John P. Maguire & Co., Inc., a corporation, et al.,
Cross-Defendants.

[Filed Nov. 6, 1970]

VERDICT

A. *Antitrust Claim*

1. Did Sylvania Electric Products Inc. engage in a contract, combination or conspiracy in restraint of trade in violation of the antitrust laws with respect to **[1305]** location restrictions and price fixing as an integral part of a single distribution policy?

Yes	No
	V

2. Did Sylvania Electric Products, Inc., engage in a contract, combination or conspiracy in restraint of trade in violation of the antitrust laws with respect to location restrictions alone?

Yes	No
√	

3. Did John P. Maguire & Co., Inc., engage with Sylvania in a contract, combination or conspiracy:

a. As described in Question 1 above?

Yes	No
	√

b. As described in Question 2 above?

Yes	No
	√

4. If the answer to Question 1, 2, or 3, is "Yes," did Continental T.V., Inc., sustain damage to its business or property as a proximate result of such violation of the antitrust laws?

Yes	No
√	

[1306] 5. If the answer to Question 4 is "Yes", what is the amount of such damage?

$591,505

B. *Claim of Wilful and Malicious Injury*

1. Did Sylvania Electric Products, Inc. wilfully and maliciously cause injuries to Continental T.V.'s business in violation of California law?

Yes	No
	√

2. Did John P. Maguire & Co., wilfully and maliciously cause injuries to Continental T.V.'s business in violation of California law?

Yes	No
	√

3. If the answer to Question 1 and/or Question 2 is "Yes", did Continental T.V., Inc. sustain damage to its business or property as a proximate result of such violation of California law?

Yes	No

4. If the answer to Question 3 is "Yes", what is the amount of such damage?

$ _____
Actual

$ _____
Punitive

/s/ R. E. McKorn Jr.
Jury Foreman
November 6, 1970

[1366] In the United States District Court
for the Northern District of California

No. 44251

John P. Maguire & Co., Inc., a corporation,
Plaintiff,

vs.

Continental T.V., Inc., a corporation; A&G Sales, a corporation; Sylpac, Inc., a corporation; S.A.M. Industries, Inc., a corporation; George N. Shahood and Margaritha H. Shahood,
Defendants.

Continental T.V., Inc., a corporation, A&G Sales, a corporation, Sylpac, Inc., a corporation, and S.A.M. Industries, Inc., a corporation,
Cross-Claimants,

vs.

John P. Maguire & Co., Inc., a corporation, and Sylvania Electric Products, Inc., a corporation,
Cross-Defendants.

[Filed Dec. 11, 1970]

JUDGMENT

Trial of the above case commenced September 25, 1970, [1367] and the jury was duly and regularly impaneled to hear and consider the questions of fact respecting legal claims of cross-claimants herein. Cross-

claimants were represented at said trial by Glenn E. Miller of the office of Johnston, Miller and Giannini; Wayne H. White of the office of Rudy, Rapoport & White, Inc.; and Lawrence A. Sullivan, Esq. and cross-defendants were represented by M. Laurence Popofsky and Richard L. Goff of the office of Heller, Ehrman, White & McAuliffe.

The evidence was heard by the jury, the jury was instructed, and the case was submitted to the jury. The jury was instructed to render its verdict on each of several special interrogatories propounded to it. On November 6, 1970 the jury returned its verdict on each of said special interrogatories (to the extent applicable). Said verdict included a verdict in favor of cross-claimants and against cross-defendant, Sylvania Electric Products, Inc. ("Sylvania") for single damages in the sum of $591,505, and in favor of cross-defendant, John P. Maguire & Co., Inc. and against cross-claimants. Said verdict has been ordered filed. Over the objections of Sylvania, the amount of said verdict for damages in favor of cross-claimant against Sylvania has been trebled to $1,774,515 as mandated by 15 USC 15 (otherwise known as § 4 of the Clayton Antitrust Act).

Cross-defendant, Sylvania, has entered no objection to an award of attorneys' fees in the amount of $275,000 (said lack of objection, however, being without prejudice to Sylvania's right of appeal from the entire judgment, including attorneys' fees, or any portion of the judgment) and this Court finds that said sum of $275,000 constitutes a reasonable attorneys' fee in this case for counsel for cross-claimants.

Cross-claimants have moved the Court for injunctive [1368] relief based on the evidence adduced at trial. The Court has considered said motion in light of all the evidence, and the Court finds that cross-claimants are entitled to injunctive relief in the respects hereinafter set forth on the ground that such relief is necessary and appropriate to protect cross-claimants against threatened loss or damage by a violation of the antitrust laws (see 15 USC § 26). The Court further finds that except as injunctive relief is specifically granted hereinafter, cross-claimants are not entitled to any other equitable or injunctive relief requested by them.

The parties have stipulated that the entire judgment in favor of cross-claimants against Sylvania and execution thereon may be stayed pending appeal therefrom and until said judgment (if affirmed on appeal) becomes final, without the necessity of bond or other security.

Plaintiff John P. Maguire & Co., Inc. and all of the defendants herein have stipulated to a judgment in favor of plaintiff and against said defendants in the sum of $145,000. They have further stipulated that one-half of the cash deposited by defendants herein to obtain release of attachment shall be applied upon said judgment, and the other half shall be returned to defendants, and that execution on the balance due on said judgment shall be stayed until final judgment on the claims asserted by the cross-claim herein, without the necessity of bond or other security.

1. It Is Therefore Ordered, Adjudged and Decreed, that the jury's verdict a copy of which is attached hereto, be enrolled.

2. It Is Further Ordered, Adjudged and Decreed, [1369] pursuant to said jury verdict, that cross-claimants have and recover of and from cross-defendant Sylvania Electric Products, Inc., the sum of $1,774,515, said sum being the verdict of the jury trebled as a matter of law, plus costs in the sum of $18,000 and an attorney's fee in the sum of $275,000, together with interest on said sums to run at the rate of 7% per annum from the date of entry of this judgment.

3. It Is Further Ordered, Adjudged and Decreed that cross-defendant, Sylvania Electric Products, Inc., and its agents and employees, be, and they hereby are, perpetually enjoined and restrained from directly or indirectly imposing, inducing, or securing any condition, agreement or understanding, either by oral or written statement or by acts of retaliation, that limits the freedom of any one or more of the cross-claimants as to where or to whom it or they may display or resell products sold by said cross-defendant and acquired by one or more of cross-claimants, provided, however, that nothing herein shall either require said cross-defendant to sell any products to one or more of cross-claimants or restrain said cross-defendant from unilaterally refusing to sell products to any of cross-claimants. Except as hereinabove expressly provided, cross-claimants' request for equitable and injunctive relief is hereby denied.

4. It Is Further Ordered that execution on the judgment in favor of cross-claimants and against Sylvania Electric Products, Inc. set forth in paragraph 2 aboye, and the injunctive relief set forth in paragraph 3 above, are hereby stayed pending appeal therefrom and until said judgment (if affirmed on appeal) becomes final, and, pursuant to the parties' stipulation, that no bond or other security shall be required as a condition of this stay.

[1370] 5. It Is Further Ordered, Adjudged and Decreed, pursuant to said jury verdict, that cross-claimants recover nothing under their cross-claim from cross-defendant, John P. Maguire & Co., Inc.

6. It Is Further Ordered, Adjudged and Decreed that plaintiff John P. Maguire & Co., Inc. have and recover of and from defendants, Continental T.V., Inc., a corporation, A&G Sales, a corporation, Sylpac, Inc., a corporation, S.A.M. Industries, Inc., a corporation, George N. Shahood Margaritha H. Shahood the total sum of $145,000 (which sum shall include principal, pre-judgment interest, costs and attorneys' fees) together with interest on said sum to run at the rate of 7% per annum from the date of entry of this judgment.

7. It Is Further Ordered, Adjudged and Decreed that the cash which was deposited by defendants herein in order to obtain release of attachment, and all accumulated interest earned thereon, as remains on deposit shall be paid as follows: one-half of the total of said cash deposit plus interest shall be paid immediately to plaintiff, John P. Maguire & Co., Inc. in

partial satisfaction of the foregoing judgment in favor of plaintiff against defendants; the remainder of said deposit plus interest shall be paid to defendants as their interests may appear.

8. It Is Further Ordered that, except for the payment specified immediately above, execution on said judgment in favor of plaintiff against defendants is hereby stayed until such time as there is a final judgment on the claims asserted by the cross-claim herein against cross-defendant Sylvania Electric Products, Inc., and that pursuant to the parties' stipulation no bond or other security shall be required as a condition of **[1371]** such stay.

Dated, Dec. 11, 1970.

/s/ Tom C. Clark by CDR
The Honorable Tom C. Clark,
sitting by designation as U.S.
District Judge, U.S. District Court.

[1437] In the United States District Court
for the Northern District of California

Civil No. 44251 TCC

John P. Maguire & Co., Inc., a corporation,
Plaintiff,
vs.
Continental T.V., Inc., a corporation, et al.,
Defendants.

Continental T.V., Inc., a corporation, et al.,
Cross-Claimants,
vs.
John P. Maguire & Co., Inc., a corporation,
et al.,
Cross-Defendants.

[Filed Mar. 2, 1971]

NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF APPEALS FROM DESIGNATED PORTIONS OF THE JUDGMENT ENTERED HEREIN

Notice is hereby given that Sylvania Electric Products Inc., a corporation, cross-defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from designated portions of the final judgment filed in this action on December 11, 1970, and duly entered of record on December 18, 1970, as follows:

[1438] 1. From paragraph 1 of said judgment insofar as it enrolls those portions fo the jury's verdict adverse to Sylvania Electric Products Inc.

2. From paragraph 2 of said judgment and the whole thereof.

3. From paragraph 3 of said judgment and the whole thereof.

Dated: March 2, 1971

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